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DEPARTMENTS OF COMMERCE, JUSTICE, AND STATE, THE JUDICIARY,
AND RELATED AGENCIES APPROPRIATIONS FOR 2004
DEPARTMENTS OF COMMERCE, JUSTICE, AND
STATE, THE JUDICIARY, AND RELATED
AGENCIES APPROPRIATIONS FOR 2004

HEARINGS
BEFORE A
SUBCOMMITTEE OF THE
COMMITTEE ON APPROPRIATIONS
HOUSE OF REPRESENTATIVES
ONE HUNDRED EIGHTH CONGRESS
FIRST SESSION

SUBCOMMITTEE ON THE DEPARTMENTS OF COMMERCE, JUSTICE, AND STATE, THE
JUDICIARY, AND RELATED AGENCIES
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NOTE: Under Committee Rules, Mr. Young, as Chairman of the Full Committee, and Mr. Obey, as Ranking Minority Member of the Full Committee, are authorized to sit as Members of all Subcommittees.

Mike Ringler, Christine Kojac, Leslie Albright, and John F. Martens
Subcommittee Staff

PART 8

The Supreme Court of the United States.....	187
Federal Trade Commission.....	257
Securities and Exchange Commission.....	353

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(ii)

DEPARTMENTS OF COMMERCE, JUSTICE AND STATE, THE JUDICIARY AND RELATED
AGENCIES APPROPRIATIONS FOR 2004

Thursday, March 27, 2003.

FEDERAL JUDICIARY

WITNESSES

JUDGE JOHN G. HEYBURN II, CHAIRMAN, COMMITTEE ON THE BUDGET OF THE
JUDICIAL CONFERENCE OF THE UNITED STATES, CHIEF JUDGE UNITED STATES
DISTRICT COURT, WESTERN DISTRICT OF KENTUCKY

LEONIDAS RALPH MECHAM, DIRECTOR, ADMINISTRATIVE OFFICE OF THE UNITED
STATES COURTS, MEMBER, EXECUTIVE COMMITTEE, JUDICIAL CONFERENCE OF
THE UNITED STATES

Mr. Wolf [presiding]. Let me welcome you.

I have an opening statement, and I will not read it in the
interest of time, other than to say that the Judiciary has
requested an 11 percent increase. And boy, this is really going
to be a very, very tough year, but we will do everything we can
to ensure that we meet the concerns and the needs of the
Judiciary.

We will try to do the best we can, but it will be a very,
very tough year. It seems like every year's a tough year, with
that, why don't you begin.

Judge Heyburn's Opening Statement

Judge Heyburn. Congressman Wolf, we are delighted to be
here again. This is my seventh year. I know Mr. Mecham
outstretches me by a number of years, but we are delighted to
be here. We know you have had a long day, but I do have a few
introductory comments and then, of course, we will be glad to
hear your questions and try to answer them and have our usual
good discussion.

I always look forward to these hearings because they are
such an interesting constitutional intersection between our two
branches of government.

And for that reason, it is an honor to appear before you.
It is really a very special experience for me, and I treasure
the opportunity to talk to you about the things that we want to
do in the Judiciary, particularly in these trying times where
we believe the Judiciary plays such an important role that both
of us--both the Congressional side and the Judiciary are
working hard to protect our country's values and freedoms.

Because the budget that we are asking for, in our view, is
really nothing more than what we believe is necessary to do our
role in the war on terrorism and the fight for freedom here at
home and around the world.

The Founding Fathers, of course, did create an independent

Judiciary for the very purpose of protecting the rights of our citizens and providing a neutral authority to enforce the very laws that you enact. And in these times, I think it is more important than ever that we do so.

We do want to thank you for the appropriation that you gave us last year. I know you just said that this year is going to be tough. We know last year was too. There were a lot of concerns that you faced towards the end of the year that I know you did not expect having to deal with at the beginning of the year, and we know you did your very best to fund the Judiciary.

You did not give us everything we asked for, but our commitment to you is to take what you give us and do the very best that we can in every possible way, and then to give you as clear a possible view as we can of the obligations that we feel we have and the resources we need to do that.

growth in judiciary workload

This year, once again, we see the continuing growth of the work that the Judiciary is confronted with. It is a workload that, as always, is uncontrollable. It is a workload, is ever-changing. And my concern is not that, the 5 percent that you gave us last year is going to lead to some terrific problem, even though it was substantially less than we asked for, or even that whatever we get this year will lead to some sort of crisis, but that over time we are getting there.

For instance, there are just a few examples of indicators that we see as problems on the horizon: The number of pending criminal and bankruptcy cases have increased 38 and 17 percent respectively since 1998. Now, that is not the number of cases filed, although certainly the number of cases filed has increased, it is the number of pending cases.

And what that tells us is that the judges and the system are not able to handle the incoming cases in as an efficient manner as we have. I am quite confident that we are handling with the same number of judges more cases than we were before. It is just that the increases continue to pile on, and the problem is we do not know exactly when this growing backlog is going to become more serious than it is.

But it is a warning sign, I guess, is all I can say.

Same thing about probation and pretrial services. The number of folks on supervision has grown 16 percent since 1998. The number of those people who are on some sort of mental-health regime is up 81 percent. The number of folks that are on some sort of substance-abuse program are up 48 percent.

All these are sort of red flares, I would say. And we have talked about this problem of probation and the increasing number of folks on supervision before and we have tried to do something about it.

In fact, this year working with the judges and working with the probation offices, we have tried to alert them to the fact that we want you to look more carefully at those who are on supervision, and if there is no reason for them to be on supervision anymore, then their supervision should be judicially terminated early.

And there have been hundreds this past year and a half since we first started this--there have been hundreds who have been taken off supervision early. These are the ones who have satisfied all of their obligations.

And in the opinion of the probation offices and the judges, they do not need supervision anymore. That saved hundreds and hundreds of hours and probably millions of dollars in the work of probation officers. And the result is that they are able to devote their time and energy to those who need the help the most.

On the other hand, what that means is the group of those that we now supervise are a group of those who are more serious offenders. They are in need of greater attention. As a group, they have more need for drug-abuse treatment, substance-abuse treatment and all that sort of like.

So we are trying to narrow our focus. We are trying to do our job and put our folks where the need is the greatest. But it is a problem that simply will not go away. It is on the horizon and I just wanted to alert you to that fact.

PANEL ATTORNEY RATE INCREASE

Another thing that I would highlight, we talked in the past about the panel-attorney rate for defenders and you recognized the problem so well and we really appreciate the rate that was increased to \$90 a year ago. And we are still trying to assess the impact of that.

But another area that we have not asked you for previously and is in this year's request is an increase of the rate that is paid to the panel attorneys who are defenders in capital cases. That rate has been \$125 since 1996 and we are asking for an increase to cover the inflationary increases up to \$157 an hour. In dollar terms, it is not a large amount of money.

But we think it is important that it ties in to this whole concern about terrorism. Good afternoon, Congressman Serrano, glad you are here.

We were just talking about the rate for attorneys who defend capital cases and we are asking for an increase and why that is so particularly important. The dollar amounts are not significant.

But more and more the attorney general is asking that the death penalty be sought. And it could be in a whole variety of cases and I suspect it will be in some of these terrorism cases. And if we do not have the attorneys who can adequately represent these folks we might as well not go through the process.

And it is not like the regular panel attorneys where the average case is a \$3,000 or \$4,000 case. They can do a couple of cases. It is--there are a lot of people who want to do it most of the time. In the capital cases, people shy away from them because it requires real expertise. When you take a capital case, it takes up a lot of time. It is not easy to get these folks. We need to have people that are experienced, who can defend these cases well.

Because if we do not, the cases just go on and on, people make mistakes. And we think it is vital that the rate for the people who will undertake a pretty thankless task sometimes

that they be at least somewhat well compensated.

So I would urge you to just give some consideration to that. Again, it is a small dollar amount. I think it is \$2.9 million overall. But it is a small but important part of the puzzle.

CONTEXT OF REQUEST

We understand the demands you are under this year. And we tried to submit a reasonable request and will continue to work with you on fine tuning that.

Earlier today I was thinking about how can I put this in some perspective for you because I was thinking about all our country is going through and what is going on in the world. And you know, it is a pretty narrow thing we are talking about really.

If you look at the main account of the Judiciary, it is \$4.1 billion. We are asking for a \$400 million increase this year. It takes about \$250 million just to keep us even. You know, that is the inflation, that sort of thing. And that is really cutting it to the bone. You know, we really need something more than that. Another \$150 million would be ideal.

We are not talking about very much to put the Judiciary on an even footing. You know, we spend billions of dollars to fight for freedom here and around the world and to keep our country safe and secure.

And I was thinking, you know, what are we fighting for? Well, what we are fighting for I think is our right to individual liberty and a system of justice that allows those rights to exist. And we are talking about \$150 million for that.

There is a famous judge, Learned Hand, who once said that ``Freedom is not the right to do whatever one wants, that is anarchy. Freedom is a society that respects and affirms the rights of individuals and their rights and their responsibilities and their differences.'' And that is what the Judiciary ensures, particularly in these times.

It is our tradition of justice, and really our judicial system and the freedoms that it allows, that is what separates us from a lot of the rest of the world. And we are not talking about whether you are going to fund the judiciary or not. We know you are going to fund the judiciary. We are talking about really a very small margin that makes the difference between just how well we can do it.

And you know, this is not theory. It is happening. I just happened to be reading in the Washington Post. There is a terrorism trial starting in Detroit.

And there is a judge, this is in my circuit and I know Judge Gerald Rosen well, and he was quoted in the Post as saying he acknowledged the trial's potential impact on the court today.

He said, quote, this is a particularly important trial and many people are watching our judicial system to see if we can give a fair trial in these challenging times.

Well, you know, many people are watching, and it seems to me that the cost of meeting that challenge is so small as compared to the cost of falling just short by a small amount.

We know you are concerned about the very same thing and we look forward to working with you and assuring that we can meet that challenge, because so many people are watching.

Thank you.

[The information follows:]

[GRAPHIC(S) NOT AVAILABLE IN TIFF FORMAT]

Director Mecham's Opening Statement

Mr. Mecham. First of all, Chairman Wolf and Mr. Serrano, I am pleased and honored to be with you once again. As Judge Heyburn said, I have been here a few times, this will be my 18th time testifying before your Subcommittee.

Actually, there were two other times, in the times of the ineffable John Rooney so this is my 20th anniversary. I thank you for that privilege.

As Secretary of the Judicial Conference to the United States, which is one of my hats, I would like to just echo Judge Heyburn's request for adequate funding for fiscal year 2004.

We are intimately involved in the budget process and we have pretty good ideas of what the challenges and problems are.

And likewise to echo what Judge Heyburn said about your great help for the fiscal year 2003 funding. That was a very painful episode for the country, and I am sure for you, it was not good for us. We went through, eight continuing resolutions, communications going out to the courts telling them how they have got to tighten their belts.

We kept them at 95 percent of fiscal year 2002 funding, implemented a freeze on hiring and so on, so we felt the pain a bit, too, as you did, as you went through that process.

I realize that fiscal year 2004 looks like the Judiciary is asking for a large increase, which it certainly is in terms of the kind of constraints you are under.

On the other hand, everything we are asking for is to carry out missions you or the Constitution have assigned us. And there is not a lot of flexibility, obviously we will do our best with whatever you give us. But there is not a lot that we can control, as Judge Heyburn said.

ADMINISTRATIVE OFFICE

With respect to the Administrative Office, which I am privileged to have the opportunity to head these past 18 years, our staffing levels have really not kept pace with the workload.

We have seen the staffing go up for the judiciary to meet the great demands, but for the last 10 years our staffing levels have been pretty well flat.

Since I have been director coming here in 1985, our share of the budget, within the Judiciary has dropped from 2.8 percent to 1.3 percent.

So we are trying to do our part, we are trying to operate lean and mean and efficiently to do our role in support of the Federal Judiciary. But the courts continue to grow in size and

complexity, while the growth in the AO staff lags.

Our workload goes up, not on a one-for-one proportion but it does go up by every increase in the Judiciary. So we feel that we have not been able to stay even in that process.

FEDERAL JUDICIAL CENTER

Another hat I wear and am privileged to do so is as a member of the board of the Federal Judicial Center, and I am aware of the vital role that the FJC plays in support of our federal judges and court personnel. One of the primary increases requested by the FJC would restore its basic judicial-educational program to a 12-month cycle.

For a number of years they have had to operate on an 18-month cycle, and it is not good for the judiciary overall. But the FJC, like the AO, is committed to maximizing the use of distance learning.

But some course work is better received face-to-face--you do not get the serendipity when you do not meet face-to-face.

So I would like, as a member of the board, to urge your support for the rather modest increase that the FJC has requested.

And I would like to thank you, and applaud the Subcommittee for inviting us to share the podium here today with the U.S. Marshal Service, so we can testify at the same time.

U.S. MARSHALS SERVICE

The support provided by the Marshals Service to the court is absolutely critical to a strong judiciary. In past years, the Judicial Conference has been very concerned about the lack of resources being requested by the Administration for the Marshals Service and the impact this shortage of deputy marshals was having on the courts.

Acting on behalf of the Judicial Conference of the United States I have been pretty vocal on it, perhaps more than I should have been, in trying to make the case for additional funding for the Marshals Service, because of the important role that they play.

Through the efforts of many, including this Subcommittee, it appears from our meetings with the Marshals Service, Director Reyna and others, that the Service is beginning to receive the additional resources it needs.

And I would like to congratulate Director Reyna for shepherding through the Department and OMB significant increases in deputies in both his fiscal year 2003 and 2004 requests, and I understand there may be some in the supplemental before you. I hope you can pin that down.

And I would like to thank Director Reyna and the Justice Department for including the Judiciary in the current update of the Marshals Service staffing formula.

We have the feeling that Director Reyna wants to do what is best for the Judiciary, we are not as sure that the OMB is of that view, but we know his heart is good.

We will continue to work with OMB and with you and I hope out of that will come something very significant. One thing we hope is that you will do as you did in your report to make

clear that the 106 deputy marshals for security that you have appropriated through our funds, and the director promptly hired them those resources here transferred back to the Marshals Service this year.

But you said they would be used for judicial security. So we hope that that will be your plan. I believe that is Mr. Reyna's plan based on meetings that we have had

I will close with that point, Mr. Chairman. And Mr. Serrano, I thank you for the privilege.

[The information follows:]

[GRAPHIC(S) NOT AVAILABLE IN TIFF FORMAT]

Mr. Wolf. Thank you.

Mr. Director.

Thursday, March 27, 2003.

UNITED STATES MARSHALS SERVICE

WITNESS

BENIGNO G. REYNA, DIRECTOR

Opening Statement--Benigno G. Reyna, Director, Marshals Service

Mr. Reyna. Mr. Chairman, Congressman Serrano, and members of the subcommittee, thank you for the opportunity to appear before you today to discuss the President's fiscal year 2004 budget request for the United States Marshals Service. I am also pleased to be on the same panel with Judge John Heyburn and Mr. Leonidas Mecham.

First thing, let me express my appreciation to you and to members of this Subcommittee for the resources appropriated to the Marshals Service in the year 2003. Your support has been very critical in carrying out our core missions of protecting the Federal Judiciary, our primary responsibility, apprehending Federal fugitives, safeguarding government witnesses and transporting federal prisoners

The United States Marshals not only protect courthouses and Federal judges, we protect the integrity of the judicial process.

Each day deputy marshals across our great country uphold the rule of law and thereby uphold justice, preserve freedom, defend democracy and safeguard the United States Constitution.

By safeguarding our Constitution, we protect the rights of all people and the American dream. This has been our role for over 213 years, and we have been an integral part of the American story.

But in order for us to protect the American dream we must have justice. But it has to be justice that is administered in

the spirit of fairness, of opportunity and due process because justice is the foundation of our judicial process.

For fiscal year 2004, we have requested a total of 4,592 positions and \$720.8 million in our salaries and expenses appropriation.

As Director of the United States Marshals Service, I am keenly aware the Service's mission to support the Federal courts and other Federal law enforcement agencies. And I recognize that to a great extent our workload is generated by others.

These efforts of Federal law enforcement to apprehend and prosecute violent criminals and the efforts of the Judiciary to rapidly try and sentence individuals have increased.

During fiscal year 2002 the United States Marshals Service received over 250,000 Federal prisoners into custody; produced prisoners for court and other proceedings over 640,000 times; received 35,500 new Federal felony warrants; served an additional 230,000 pieces of judicial process; investigated over 500 potential threats to members of the judicial process; accepted 118 new witnesses into the witness protection program, and brought the total number of principle witnesses to 7,400; cleared 34,000 Federal felony warrants and disposed of over 21,000 seized properties.

And there is another important aspect of the United States Marshals Service, and that is our strong commitment to work with our other Federal, state and local law enforcement colleagues.

As the former Chief of Police in Brownsville, Texas, I can assure you that these long-term relationships are the best tool for fighting crime and more importantly, improving the quality of life in our communities.

In addition to our Federal warrant workload, last year we assisted state and local law enforcement agencies to clear 27,000 state and local warrants.

With your permission, I would like to highlight a few examples of what we encounter each day in our districts.

In Manhattan, several prisoners were being held in the jury box for pre-trial arraignment. And one of the prisoners attempted to either escape the courtroom and/or attack the judge. As he leapt out of the jury box, he was quickly brought to the ground by deputy marshals in the courtroom. No one was injured, and there was no further incident with any other prisoners.

We have individuals in our witness protection program who have provided testimony in significant terrorist-related prosecutions. Some of the testimony resulted in successful conviction of terrorists involved in the first World Trade Center bombing and trials.

More recently, we have been facilitating the re-interviews of these witnesses by intelligence officials and federal prosecutors to obtain further potential valuable information.

Earlier this month, two New York City detectives were tragically killed during an undercover operation. Our New York, New Jersey regional task force was contacted and we immediately dispatched deputy marshals to follow-up on leads in Pennsylvania and in Maryland.

Using highly specialized surveillance equipment and

investigative techniques, the suspect was captured in Brooklyn within two days. Our ability to cross state lines in the pursuit of the fugitive is a determining factor in closing this case quickly. Police Commissioner Kelly commended the deputy marshals for their assistance in this critical arrest.

These types of incidents repeat themselves across the country.

In the words of Deputy Attorney General Larry Thompson, and I quote, ``the United States Marshals Service sometimes performs its most critical work outside the limelight and with little fanfare. Yet, its personnel make extraordinary sacrifices on a daily basis to safeguard our courts and our communities.''

I am continually impressed by the dedication and hard work demonstrated by the men and women of the United States Marshals Service.

Mr. Chairman, honorable members, I would like to impress upon the Subcommittee that we continually strive to make better use of the resources we have before we come and ask for more.

Over the past 15 months, we have streamlined and improved our internal personnel processes. Specifically, we have filled 104 supervisory law-enforcement positions, keeping an average of 16 weeks from application to selection. Previously, that took an average of 20 weeks to fill one supervisory position.

As we know, first-level managers are critical for the success of day-to-day operations in the field because they provide direction and leadership to over 2,000 deputy marshals.

We hired 215 new deputy marshals last year, the highest single year in the past 10 years. Our on-board strength today is the highest it has been in four years. We maintain a pool of at least 200 candidates for deputy marshal positions.

And we are using workload metrics to quantify our staffing needs to determine which districts are in the most need of resources. Simply stated, we are putting the people where the work is.

But to accomplish this, it is vital that the newly funded positions are appropriated without location designations, allowing us to continue to put the people where the work is. I recognize and appreciate the subcommittee's work in providing us this hiring flexibility and look forward to the same practice in 2004.

In addition, we are doing our part to support the Attorney General's goal of transferring positions to support front-line missions. We have done this by moving vacancies from headquarters support functions to operational areas.

Our fiscal year 2004 request includes an increase of 275 positions, including 231 deputy marshals, and \$26.6 million to meet the Judiciary's need for more security. Our request addresses a critical need to perform our primary mission, which is to protect the Federal Judiciary. The number of judges and court locations has increased, thereby raising and expanding the level of support we must provide. Escalating security alert levels since September 11 have resulted in additional judicial security requirements on an every day basis.

Terrorist-related court proceedings, as we know, require an unprecedented level of protection for all trial participants due to the risk of additional terrorist attacks, the public's concerns and intense media interest. Our requirement to support

terrorist-related court proceedings is widespread and not limited to Virginia and New York. The impact on the Marshals Service is particularly demanding in places like Florida, California, Oregon, Washington, Illinois, the District of Columbia, New Jersey, Michigan, North Carolina and Texas.

I know, Mr. Chairman, that you have been very supportive of our efforts to provide security at the courthouse in the Eastern District of Virginia where Zacarias Moussaoui is charged as a co-conspirator in the September 11 terrorist attacks. I would like to thank you for your support in obtaining the funds in the fiscal year 2002 Emergency Supplemental specifically for this purpose.

The threat levels associated with these cases mandate that additional deputy marshals be assigned to ensure the safety of all courtroom participants and to safely transport prisoners to all judicial proceedings. Even when these cases do not lead to trial, we must provide security at all pre-trial prisoner and material witness proceedings.

Equally important, we must ensure the safety of all Marshals Service employees. The men and women who dedicate their lives to protecting the Federal Judiciary must receive advanced training and equipment to perform their jobs safely.

In addition, we request \$2 million to provide security systems in four new courthouse facilities and to upgrade security equipment and facilities where high threat and high profiles trials will occur. The Subcommittee's support in providing funds for courthouse security equipment and renovation has let us remedy weaknesses in many courthouses. Security systems reinforce the physical security provided by deputy marshals when producing prisoners for court.

Cameras, duress alarms, remote door openers and other equipment improves the security condition within a courthouse. When incidents occur, we are better equipped to record events, monitor personnel and prisoners, and identify situations requiring an immediate, and sometimes a life-saving, response. I ask for your continued support in this area.

Before I conclude, I ask for your support for the Judiciary's fiscal year 2004 budget request. The Marshals Service has always enjoyed a close working relationship with Federal judges across this nation, and every year the Judiciary transfer funds to the Marshals Service for court security officers and security-related equipment such as metal detectors, x-ray machines, and trace detection devices for all courthouses. These resources are critical for the Marshals Service to maintain the safety and integrity of the judicial process.

I hope that I have been helpful in highlighting our accomplishments over the past year and in describing our need for additional resources in the upcoming year. I appreciate the Subcommittee's time that has been provided to the Marshals Service, and for giving me the opportunity to appear before you.

This concludes my prepared statement. I would be pleased to answer any questions that you may have.

[The information follows:]

[GRAPHIC(S) NOT AVAILABLE IN TIFF FORMAT]

Mr. Wolf. Thank you, Mr. Director.

The staff tells me that this is the first time the Marshals Service has been before the full Committee in ten years. Is that right?

Mr. Reyna. That is correct, Mr. Chairman.

Mr. Wolf. Well, I do not disagree with anything that any of you have said. Our problem is we are faced, as we were in 2003 with allocations that are very tight and it is a trade off of--you know, all morning we had the Director of the FBI, who is asking for additional funds for counter-terrorism.

Many of those responsibilities spill over into your areas--but funding is very--it is like which one of your children do you want to short-change and, in some respects. That is the problem, but I think you have made a case that is factual or accurate.

It is just a question of how much funding can you draw out of the Committee to fund many competing programs. There is the issue of embassy security. We have people serving abroad. We had the Tanzania bombing, the Kenya bombing and the Beirut bombing. So there are many important programs that require funding increases.

But I think you have all made a good case, and the Committee will attempt to do the best it possibly can. Let me ask you some questions.

COURT SECURITY

Court security: Responsibility and funding for Federal court security programs are shared by the Marshals Service and the Judiciary. The Marshals Service's budget funds deputy marshals responsible for protecting the judges. Have there been, in the last year, threats against judges?

Mr. Mecham. There have been many. I get a report every week.

Mr. Wolf. Ones that you take seriously?

Mr. Mecham. Well, some judges are under full security.

Mr. Wolf. How many judges?

Judge Heyburn. Well, you never know whether it is serious or not till after it is been fully investigated.

Mr. Wolf. Nowadays everything is serious.

Judge Heyburn. For instance, just recently I had a case, it was a products liability case--pro se plaintiff. The plaintiff was abusive continually in pleadings to me, but it was not something that I took that seriously. And, finally, I got a pleading which--this was three weeks ago--which I believed to be serious and I am a pretty tough-skinned person. You know, I ran for office and people say a lot of things about you.

[Laughter.]

And I thought it went way over the line. I was--certainly was not going to show it to my wife. You know, she would have gone ballistic. But, I felt uneasy about having this person around me and about having him around court personnel. And so, I called a United States Marshal. I showed him the thing and said, ``Look, I do not like this. You tell me?''

And they went out there, thoroughly investigated the

situation and after a couple of days did determine that he was not a threat. And after they did that, we were relieved and we felt like the situation was under control. They are sort of watching him, but they do not believe he is a threat

Now, you know, I think that kind of thing happens not infrequently.

Now, is that a person who is trying to do physical harm to a judge? In my case it turned out it was not. But having the marshals there and being able to respond to--it was not just me, it was the staff. I mean, this person would come in and file pleadings all the time, and they felt very uneasy about it

So that is just one person's example, which thankfully did not turn out to be a threat, apparently, to me or anybody else

But if we had not had the Marshals, if they had not been so responsive, then it really is coercive to the whole system.

Mr. Wolf. How many judges have been killed or assassinated in the last 25 years

Mr. Mecham. In the last 25----

Mr. Wolf. The last one was in Texas, was that the last one?

Mr. Mecham. No, the last one was in New York.

Mr. Wolf. New York. What one was that?

Mr. Mecham. It was in Queens, he was killed by the father of a disappointed litigant. Judge Duranco. There was also one in Alabama, a circuit judge who was----

Judge Heyburn. Judge Vance.

Mr. Mecham [continuing]. Judge Vance who was killed and also a district attorney was in the same case in Florida, he was killed, as well. Judge Vance's wife was threatened.

And then there was one, I think it was Judge Wood in Texas.

Judge Heyburn. But, you know, I do not think--I mean, I know you did not ask the question this way, but the number of people who end up being killed or hurt I do not think is the criteria.

Mr. Wolf. No, of course not. But I think there is a danger. I know that there are times that when people are upset or angry, also with the terrorism threat, and courthouses are a potential target, so I just wanted it for the record.

Judge Heyburn. Of course, we are confronted with the same problems you are here, I am sure. We are trying to provide security at the same time we want to keep the courthouse accessible, because that is the sign that work is going on, the country is going about its business, and we want to present that approach to people.

At the same time, we want to have security. It is a tough thing to do, as I am sure you all are wrestling with.

JUDICIAL SECURITY PROGRAM

Mr. Wolf. While the Judiciary's budget request funds courthouse building security and equipment, guard service, but the majority of the funds are appropriated to the Judiciary's court service account are then transferred to the Marshal Service to manage the funds.

Fiscal Year 2003 conference report required an independent study and a report to the Committee on the administration and management of these programs.

What is the status of the study and are there improvements

that can be made to the administration of the programs?

Mr. Reyna. Mr. Chairman, the Marshals Service currently is developing a statement award to determine the results, I guess, of what that study is designed to do.

I think it is important that we study those issues and make a determination as to the effectiveness that we find within that process, but I also think it is important that the Administrative Office of the U.S. Courts participate with us and they have been very cooperative in working with us and trying to begin the study.

We are in the process of developing a statement of work for that.

THREAT LEVEL RESPONSE

Mr. Wolf. Does the operation of the courthouse change when the threat goes to orange?

When it goes to orange or red, you have a procedure that takes place in a courthouse when the threat does go up?

Mr. Reyna. Yes, sir. One of the----

Mr. Wolf. Every courthouse across the country?

Mr. Reyna. Yes, sir. One of the things that I think was really important that we need to accomplish when our country developed a system of alert levels was to harmonize our threat level response within the courthouses.

And we have done that nationwide. However, there are some courthouses that require that even if the threat level is lowered and the national threat level is lowered, we maintain a higher level because of this current and ongoing terrorism-related or high-threat trials that may be going.

So some of them actually may stay up.

Mr. Wolf. Do you get specific briefings from the FBI, or Homeland Security?

Mr. Reyna. Yes, sir. What we, obviously, maintain dialogue with the other agencies regarding intelligence matters. We are a consumer only of those, I guess, those, that intelligence, and ensure that it is used so that we can adequately secure members of the judiciary.

JOINT TERRORISM TASK FORCES

Mr. Wolf. Are you a member of the Joint Terrorism Task Force in all the regions?

Mr. Reyna. Yes, sir. We participate in the Joint Terrorism Task Force.

Mr. Wolf. Every one?

Mr. Reyna. Yes, and in addition to that we also participate in some of the other centers that perhaps share information. Some of it may be whether we, you know, we might not necessarily sit in every one of these task forces, but we have dialogue with that particular----

Mr. Wolf. So are there some task forces you are not part of?

Mr. Reyna. There are some task forces that we may not be part of if we do not really play a significant role in that. Since our mission is protecting the Judiciary and fugitive apprehension, there may be others that may be of an

investigative nature.

We will support them if there is a fugitive mission piece to that, or certainly there will--you know, our concern is that we want to make sure that even if we are not sitting in a particular organization that at least people know that we welcome any information that may relate to securing the judiciary.

Mr. Mecham. Can I make a comment, Mr. Chairman?

The Judiciary is not involved in those task forces but we would like to be kept informed as to the threat level status. There have been some meetings we have been involved with and some where we are not invited.

Mr. Wolf. What would the reason be? We can certainly, what would the reason be? The FBI----

Mr. Mecham. I think they sometimes forget there is such a thing.

Mr. Wolf. Would that compromise----

Mr. Mecham [continuing]. As the Federal Judiciary.

Mr. Wolf. No, the Joint Terrorism Task Force is 67, 61 regions. All of the State and local law enforcement come together with Federal law enforcement, exchanging information. You are not going to solve all terrorism at the Federal levels--Federal, State and local law enforcement must work together.

You know, would that compromise a case at all for you to be involved?

Mr. Mecham. I do not think so. We don't actually need to be part of the joint terrorism task force but would like to have the marshals keep us well posted.

Mr. Wolf. The Marshals Service is probably not involved in all of them. Of the 61 or 67 how many do you participate in, and you do not have to answer if you do not know.

Mr. Reyna. Yes, I will have to get back to you on the specific number, Mr. Chairman.

However, obviously, one of our concerns is one of resources. Our goal, our primary goal every day is to secure the Judiciary first. And so, we have to make adjustments in our staffing. And so that is our priority in the Marshals Service.

And so, anytime that we venture into being a member of a task force, we have to do it cautiously, and ensure that it does not impact on the Judiciary.

However, I agree that it is vitally important that we have this long-term relationship in sharing information. I come from a global background, where, you know, cooperative efforts are a must. And in these trying times and difficult times in our country, knowledge is going to be the most important tool in combating terrorism and maintaining safe communities.

[The information follows:]

United States Marshals Service (USMS) Participation on Joint Terrorism Task Forces (JTTFs)

The USMS participates in all JTTFs in a liaison capacity. Each of the 94 district offices has at least one person that is designated as a liaison to the closest JTTF, and each office is encouraged to send available personnel to the JTTF's. Currently, eight districts and one headquarters office have

personnel that spend the majority of their time working with the JTTF's. The USMS estimates that 8 FTE will be expended supporting JTTF's in FY 2003.

Mr. Wolf. Well, Judge, or Mr. Mecham, if you want to give us a letter telling why you think you ought to participate, we would certainly consider it.

Mr. Mecham. I will do that.

Mr. Wolf. I guess the determination of that membership would be through the Attorney General? Through the FBI?

Mr. Mecham. Well, it is particularly true here in Washington, D.C. But there may be some other parts.

Mr. Wolf. Maybe New York City, and----

Mr. Mecham [continuing]. Of the country, I will need to find that out.

Mr. Wolf. Maybe some of the larger metropolitan areas?

Mr. Mecham. Yes.

Mr. Wolf. Well, why don't you look at it and think, and if you do, give us a letter. And we will ask the director, Director Mueller.

TERRORIST TRIALS ON MILITARY BASES

Have the Marshals and the Judiciary considered creating a place for holding court for terrorist trials on a military base?

I understand the courts and the Marshals Service have already spent \$14 million on security costs alone associated within the Moussaoui and the Walker-Lindh trials in Alexandria, which joins my congressional district?

This does not include the costs of the City of Alexandria sheriff or police departments. Also, it does not include the inconvenience to the people that live in the vicinity of the courthouse.

Would there be any merit, or has any thought been given to establish or holding a court--at Quantico or Fort Belvoir, that would be an institutional U.S. District Court?

Judges would sit, but there would be heavy security on the military bases. You cannot get in Fort Belvoir, you cannot get in Quantico. That would be more effective than holding these cases and putting the stress and the demand on the Marshals Service, on the Judiciary?

Have you given any consideration to having one, let's say, at Quantico or at Fort Belvoir?

Judge Heyburn. There are a number of obstacles that we would have to think about as we considered such an idea. One would be that, whatever the military base would have to be within the district where the trial was to be held anyway----

Mr. Wolf. Correct. I was more thinking of our area. I think with the rocket-docket here, you are going to see more activity here, other than maybe Mr. Serrano's district there in New York, but perhaps here than almost any other.

I understand you cannot take a person from Alabama and send them up here, but but go ahead, go ahead.

Judge Heyburn. And then the idea of a military base has, perhaps, some appeal, but on the other hand, it would tend to isolate the proceeding and the trials from the public. And, you

know, it is something we are always wrestling with.

But if this is a civil trial, not a military trial, I think the symbolism, if I was a judge weighing it, the symbolism is powerful.

You want to, in my view--particularly in a time of stress--you want to go on with our normal way of doing things and provide all the security necessary.

So, from a judge's perspective, that would be something I would be very concerned about.

Mr. Wolf. Well, there are some good reasons. How about, do you----

Mr. Reyna. Mr. Chairman, the----

IMPACT OF HIGH PROFILE TRIALS ON LOCAL COMMUNITIES

Mr. Wolf. There is only so much we can put into the Alexandria Courthouse. And I think we may have hit on that, and I think that citizens down there, those people will not be able to get back and forth on the street once the Moussaoui trial begins.

Mr. Reyna. Mr. Chairman, the Marshals Service does not play a role in deciding the proper venue for trials. It is something that is handled between the Department of Justice, assuming the Judiciary and certainly the United States Attorney's Office for that particular location.

However, we do play a central role in the security of wherever the trial may be. And one of the things that, if I may explain and give--speak about Eastern Virginia as an example. That was obviously a very unique, and it is a very unique type of trial. Something like the Marshals Service had never, ever seen before.

One of the things that we want to ensure from day one, we were notified that the actual trial was going to be held in Eastern Virginia, was that we needed to ensure, first of all, that we needed to communicate with all our counterparts, all our colleagues at the local, county and State level. It was important to let everyone know what the actual needs and what the potential needs of the Marshals Services and the Federal government would be.

But, more importantly, it was an opportunity for us to understand what kind of impact these kinds of proceedings would have on the local law enforcement community.

In addition to that, it was important also for us to communicate with the local elected officials--county, state and even the Federal elected officials from the area and to inform them of what was going to occur.

We took it one step further and also communicated with various community groups, including homeowners groups in the area. It is important--it is critically important that we communicate with citizens and ensure that their daily lives are not impacted and that security be a transparent type of process for them and keep them informed.

There is no doubt that the type of security levels that we have implemented in Eastern Virginia do have an impact on the citizens. And we want to ensure that we work with them, along with the local elected officials and our counterparts to ensure that we minimize that and maintain balance in providing the

best security possible.

Obviously, security is our priority when we make decisions. But I think it requires constant communication. It requires a high level of understanding and a strong spirit of cooperation and teamwork among the law enforcement agents to make this happen.

I would like to take this moment to acknowledge the tremendous support that we received from the local community, law enforcement community, the local officials and the City of Alexandria for their tremendous support. They have been very accommodating, sometimes through some very difficult times. We understand those complexities and are willing to work through that and ensure that our citizens can move on about their daily business without too much of an adverse impact on their daily lives.

Mr. Wolf. Well, Judge Heyburn said he did not think it would be a very good idea. Mr. Mecham, have you been down there to see what has been done?

Mr. Mecham. Yes, I was there. If I were living in one of those apartments there, I would be apoplectic about it. But I understand the problem.

Incidentally, under law, unless you change the statute, the only place the Eastern District can meet is Alexandria, Newport News, Norfolk and Richmond. You would have to have a military base in one of those towns to do it. Then you run up against the policy decisions, I guess, that Judge Heyburn was talking about, the symbolism.

Judge Heyburn. I was not speaking about Virginia particularly. But you know, when we have a prisoner in court with a jury, we do not typically put them in irons. And if you move a trial to a military base, one could say it is the equivalent of putting them in irons. I mean, jurors are going to notice the difference.

And you have to deal with every situation individually. But I think you would have to think pretty long and hard before you made that kind of a change. Maybe--of course, I am not a citizen of that particular area----

[Laughter.]

Mr. Wolf. No, it is very tough, and you know it is not my district.

And obviously--and I would take your word if you think it is a bad idea. But you are taking \$14 million out there. It will probably take additional money. And the Judiciary being as tight as it is, you begin to--but let me recognize my friend, Mr. Serrano

Mr. Serrano. I just wanted to weigh in. You know, I always pay a lot of attention to those areas of the country that have growth in immigrants, new Americans as we call them. Northern Virginia, as we know, is, according to the Census Bureau, is the largest increase of Hispanics in the nation. In large numbers it is Texas, California, New York. But in percentage, it is Northern Virginia.

There is no worse message you can send to folks who come from countries like the ones they come to then to see the military hanging around the Judiciary.

Mr. Serrano. And I was getting to that, because we have the same problem in New York. In New York, we are going to have a space problem for what will eventually be a lot of cases. But I

do not know that the solution is to have terrorist cases heard using a military base, because the whole message that that sends of mixing the Judiciary with the military is kind of scary to a lot of folks. It is scary to a lot of Americans who have been here all of their lives.

We had an incident in New York, which I oppose and people just kind of thought I was being silly at first, and then they realized that maybe there was something to it.

We had an asbestos problem in a bunch of buildings, school buildings in New York and it was election time. And in New York, as you know, we do not use the fire house, we use the school building. So someone suggested at the Board of Elections, innocently, we will have the elections in a tent outside the school building. We will have the National Guard patrolling. I said, no. I mean, they will never come out to vote. That is what they came here for to get away from the National Guard standing in front of the polling site, or the military.

So it is a problem. And I certainly want to see how we can solve the fact that--you are right. When these trials begin to come, New York City, from traffic to space is going to be a nightmare. Northern Virginia, D.C., Maryland--these are the two areas that will take the brunt of it. I just do not know if the solution is bringing it--moving it to a military base.

Mr. Wolf. Well, if you and the judge feel that way, then maybe you can influence me. I just wanted to get it out on the record.

Although I will tell you, this region--and I am going to recognize Mr. Serrano for questions--we are becoming gridlocked in this region. They are shutting streets off here. Pretty soon you will not be able to move around the city.

They shut one in front of the White House and in the back of the White House. And we are a city where they just shut this street down and shut this street down. Sirens coming up and down. And so getting to work--Mr. Mecham, where do you live?

Mr. Mecham. I live outside the beltway in the low rent district of Potomac. [Laughter.]

Mr. Wolf. And how long does it take----

Mr. Mecham. I take the metro.

Mr. Wolf. How long have you taken the metro

Mr. Mecham. I have taken it for 26 years, whenever they opened. I have only driven to work twice. [Laughter.]

Mr. Wolf. Do you use the pass?

Mr. Mecham. I do. Yes.

Mr. Wolf. You use the pass, okay.

Mr. Mecham. I do.

I feel it is my duty. [Laughter.]

Mr. Wolf. Because if you talk to the average person, their commute has increased tremendously, and a lot the reason is because of closing down the different streets. You no longer can go in front of the White House. Let me recognize Mr. Serrano.

CONGRESSMAN SERRANO'S OPENING STATEMENT

Mr. Serrano. Thank you. Thank you, Mr. Chairman.

First of all, let me apologize for the fact that I was

late. I was at the newly created Homeland Security Subcommittee's hearing, and I wanted to get in my usual questions on civil liberties to the folks who are going to screen everybody. And they are asking a little old lady in a wheelchair to take off her shoes and get off from the wheelchair so they can search for bombs. And it has become a little overreaching, I think.

Let me, with that in mind, if you do not mind, Mr. Chairman, read my opening statement which I neglected to do because I was hanging out with Mr. Rogers.

I appreciate the opportunity to welcome the distinguished representatives today for this hearing. I am confident--maybe I should not be after I heard the chairman speak--that the committee be able to meet the budgetary needs of our nation's judiciary most adequately.

I would like to say that I believe the importance of the institutions you gentlemen represent is heightened in turbulent times such as these.

For citizens of the United States, the Judiciary represents a critical last line of defense against overreaching acts of the Executive Branch, or against unconstitutional laws passed by the Legislative Branch.

In these past few weeks, throughout the preceding hearings, I have often focused on new threats posed to civil liberties in this country. As our nation endeavors to defeat terrorism we must not lose the freedoms which we define--which define our country and which make our country great.

It is the important responsibility of the courts to safeguard our civil liberties and to uphold our Constitution's protections.

I have often said since September 11th, that in the process of getting the bad guys, we cannot trample on the rights of the good guys.

I urge you as members of the judicial community to treat this issue with the thoughtfulness required. I am confident you will do so.

Now I have a couple of questions, but let me first say to you, Mr. Reyna, that you probably will never get an endorsement of your agency like the one I am just going to give you. But there is a young man in New York who works for you who is like a son to me. And he gave me a Marshals' cup, which I drink everything in New York out of.

And then I had a detail from your office a couple of years ago, who upon leaving, gave me a similar cup which I drink everything from in Washington. [Laughter.]

So I do not know if this really means anything to you. But when this Congressman drinks, drinks acceptable drinks----

[Laughter.]

Which in my culture would be Bacardi, right----

[Laughter.]

They have come out of Marshals cups. And keep that in mind.

Mr. Reyna. They are great cups. [Laughter.]

Mr. Reyna. Do you use them in the microwave? [Laughter.]

EXTENDING MARSHALS SERVICE ARREST POWERS TO IMMIGRATION VIOLATIONS

Mr. Serrano. No, they have the gold seal on them. And so it

is questionable. I have not tried them in the Microwave. I do not want to ruin them. I do not want any trouble with my son back in New York.

One of my concerns, and this is for the Marshals Service, although all of these questions are really issues that we should all deal with here, is the increased authorities. It has been reported that the Attorney General has signed an order giving the FBI agents and U.S. Marshals authority to arrest people on immigration violations.

Why was this order necessary in your opinion? You have sufficient authority to--don't you have sufficient authority to arrest or detain individuals suspected of terrorism? Therefore, do you need to get into the other area?

Now, let me tell you what my concern is, and it plays something into what I said before, Mr. Chairman. The whole issue with me in all of our communities, especially in our immigrant communities, those folks who have been here a while who want to become citizens, who are citizens, is that they learn quickly that in this society, unlike any other society, our police, our courts, our law enforcement are professionals who 99.9 percent of the time are not abusive and do the right thing. And we want to gain from these folks who come from societies where that is not the case, that respect.

Now the most disliked agency for anybody who was born anywhere else, or who looks at someone who was born somewhere else, is the INS. Whether you are citizen by birth or became a citizen last week, the INS scares the hell out of you. To have anybody else acting as INS agents I think creates a wall that could be a problem.

If you were police chief still, part of the plan was to have police arrest people on immigration violations, a lot of police chiefs throughout the nation have said, ``I do not really want to do that because they will not tell me when somebody is stealing a car or whatever, because they are afraid I am going to discuss immigration issues with them.''

What are your thoughts about that whole thing? And I know if that was the order and you are going to follow it, because that is what you do and do well. But how do we make sure that we do not overreach here and start getting into areas we should not be involved in?

Mr. Reyna. Congressman Serrano, certainly I----

Mr. Serrano. I appreciate how he rolls the r's. [Laughter.]

Mr. Reyna [continuing]. My last name is Reyna. [Laughter.]

But Congressman Serrano, I appreciate your concerns. And one of the things that has happened, is there is an order than has been signed by the Attorney General extending arrest powers. However, no implementation of that order has taken place. This matter is still being discussed with the Department of Justice to determine what the next step may be. I would be more than happy to provide information to you and to the committee when there is a decision that is reached on that matter.

However, at this time, there is no exercise of those powers. It is still under discussion and under our review.

If I may, I wholeheartedly agree with you in protecting the rights of our people and ensuring that even though we have a law enforcement responsibility and authority, we must recognize

that the badge is not a badge of authority, but a symbol of trust that has been entrusted to us by the citizens of this great country.

And so it is important that when we are out there performing our job functions, regardless of what they are, that we treat everyone with courtesy, dignity and respect. And that is certainly the goal of the United States Marshals Service in trying to accomplish its difficult missions.

Mr. Serrano. Now, for instance, I had understood at least on paper, the Marshals' main objective being the protection of our Judiciary. I know you get involved in other issues such as--I know during the Vieques protests in Puerto Rico, there were Marshals there involved with that issue. I do not really know what the tie was in. But that is what happened. And I understand that and that is okay when those things have to happen.

But this whole idea of having you serve as immigration officer, if you will, I think is just a dangerous thing.

Now, without reaching into an area that you are maybe not able to talk to me about in public, is it being discussed, because it is not ready for implementation yet or are there some folks outside of your area that are having trouble with it and, therefore, it is being discussed further?

Mr. Reyna. I think the whole process is under review. I do not know that there is any specific structure, but there is probably various issues and various opinions regarding that matter. Our goal right now is to try to determine what direction this new order will take the Marshals Service into.

And so, we will continue working with the Department of Justice. I do not have any specific information that I can provide to you at this time. However, I would be more than happy to provide any additional information as far as we get it from the Department of Justice.

Mr. Serrano. Right. You also have been, since September 11--you know, I was thinking at the other hearing today, Mr. Chairman, just how sad the September 11 date has become. It is two years ago and we still refer to it as September 11, and I suspect 25 years from now we will refer to September 11 and everybody will know that it was THAT September 11 and not another one.

Have you had since then any other expanded powers given to you, other than the one that I just mentioned since that date?

Mr. Reyna. No, sir. What we have been doing has actually been supportive of the mission of the various law enforcement agencies within the scope of our responsibilities. As you know, all of us learned that within our profession and in law enforcement that there were certain things that we needed to do different. And so, we have had to make some of those adjustments and the most important thing that we needed to do different was to cooperate, was to share information, was to work with the highest degree of cooperation and teamwork.

You know, it does not matter whether we are in, you know, law enforcement agency x, y or z. All of us in this great country, and all three branches represented here, have one common goal, and that is to protect the American people. And so, our efforts have been focused on supporting some of those missions.

We have been impacted, obviously, seriously impacted, by

September 11 events and that is in handling these trials and the great demand that has been placed on the courts and the great demand that has been placed on the United States Marshals to support the courts. That is the reason that we are here today.

If I may point out, one of the things that is important to us and the reason we are here is that we simply just do not want to ask for more like we have done, perhaps, in the past. We need to ask for things that are specifically dedicated to enhancing our mission, our primary mission, which is the protection of the judiciary.

Because if we ask for some of the same things, we will be where we were before September 11 and we do not want to be there--the United States Marshals Service is not going to be there.

What we want to do is find the mechanisms to secure the judiciary because--you know, the Judiciary, as I stated earlier, the Judiciary is what maintains justice and should something occur in the Judiciary, then we would obviously have a very serious and significant catastrophic event in our country.

So when we talk about freedoms, when we talk about liberties, when we talk about opportunities to resolve an issue in this great country of ours, it means protecting the judiciary because that is where civilized men and women go to resolve every type of issue. So we must do everything that we can to protect the Judiciary, not only during difficult times, but during every type of function they have and ensure that nobody will ever not only threaten the Judiciary, but also interfere with the fundamental work that they do and the cornerstone type of work that they do in maintaining democracy.

CAMERAS IN COURTROOMS

Mr. Serrano. You know, it is interesting you say that because, as a follow-up to my comment, Mr. Chairman, about immigrants and how they see our society, the comment I always get from folks who come from Latin America--the big thing that stands out in their mind is the respect for the Judiciary.

In so many of these countries, you know, the local drug dealer can get rid of a judge whenever he wants to, you know, and does. You know, and over here, they see that all the time.

To the Judiciary, in the aftermath of the September 11 terrorist attacks, and with the current sniper case here in D.C., there has been significant discussion about the possibility of cameras in the courtrooms to televise the hearings of public interest

What is your position on this issue?

Now let me tell you that I am rethinking this whole issue. When I was in the State Assembly a thousand years ago, I was always opposed to cameras in the courtroom because I never thought of the bigger trial, Mr. Chairman. I always thought of the local drug dealer going before a camera in the courtroom and somebody saying, you know, in the process of convicting him, that he owned 17 late-model cars and three mansions, and so on.

And I figured some kids watching that would say, ``Gee, it

is worth the risk. Look at all the stuff he has got.''

So, I mean, that was my advised opinion in those days. Now, seeing other trials on TV at times, and rethinking that, but--

-- What thoughts do you have, especially for the kinds of trials we are going to be having?

Judge Heyburn. Well, I mean, this is an issue that----

Mr. Serrano. As the camera focuses in on you

Judge Heyburn. Yes. [Laughter.]

There are a lot of different opinions.

The current policy of the Judicial Conference, and I believe, statutes of the United States, are against the use of cameras in courtrooms, and there are a lot of good reasons for that. You know, I think it is fair to say that there are some reasons on the other side. And it is a long discussion. I do not know exactly what kind of response you are looking for.

Mr. Serrano. Do you folks personally have a position, or are you presenting the Judicial Conference's position?

Judge Heyburn. I am presenting the Judicial Conference view of it. And I happen to agree with it, by and large, so I do not have a problem. I am not saying that there could not be exceptions under certain circumstances. But I think as a general rule that cameras in the courtroom are a diversion and can cause more problems in the adjudication of a case, and do not necessarily help.

I mean, after all, as far as getting the news out, people are in the courtroom, everything that happens is open. Everything that happens in every courtroom is open, and every decision we make is an open one--so open that we state reasons why we--in detail--we do things the way we do.

And my personal opinion is that it is basically a good rule. I know there are views on the other side, and there could be exceptions. But, I have no problem supporting the Judicial Conference on it, and the statutes in this case, so far.

Mr. Serrano. Do you think there might be a special call during, you know, terrorist trials, if you will, for these things to be on TV?

I mean, I know, certainly, the networks want it on, because, you know, but I do not think they should have the last say, or a say at all in this.

Do you think people will cave in to that?

Judge Heyburn. I do not know. I think we ought to always keep our eye on the ball. I mean, the most important thing is that the trial be conducted in a fair way and that it be open and that, there have certainly been examples of where the intrusion of television has not been a positive thing for a trial. That may not be because of that intrusion; it may be because of the way it was handled.

But, from a judge's point of view, if you have a difficult case, it is always possible that having the television cameras there raises more difficult questions. You can do all kinds of things to minimize the problems, but you have all these concerns about juror privacy, about witness privacy, about publicity, generally, that can affect all kinds of elements of a case.

If it is a politically charged case, whether the case is being tried to the public at large as opposed to the jury. All

these are questions that do not make having a camera impossible--they just make it more and more difficult.

I mean, after all, as a judge, my job is to have a fair trial. And having a fair trial means that the jurors are presented with the evidence in a fair way. As to how the public perceives it? It is an open courtroom and everybody can know what is going on, but certainly a secondary concern is whether someone is able to watch it in their home. That is just not the primary concern, from my point of view, as a trial judge.

Mr. Serrano. I guess that brought up a point that I, in all honestly, have never thought of--that a prosecutor could, in a politically charged trial, play to the TV audience in a way where, if the result, the verdict, is not what he has gotten the people to believe should be, we could have incredible tension between the public and that jury.

Judge Heyburn. And why that is important--and I recognize there are views on all sides of this--but what you want to do, from a judge's point of view, you want to insulate the jury from what is going on out there. Because you do not know what influences jurors will feel. The influences they may feel from their friends and family.

Even if they are sequestered, what is going to be the reaction afterwards? Whatever verdict they come through with--can they deliver a verdict that is fair and honest, based on the facts and the law, and not based upon some public opinion out there, whether for or against? That is what we want from a jury.

And even if they are sequestered, even if you had to take the unusual step to sequester because there is a lot of publicity, which is not what you want to do, of course, then what will the reaction be when they go back to their communities

Will they be concerned about that and weigh that concern when they are deciding the very important fact of their verdict?

You know, you tell them over and over again, but if they feel they will face some negative feeling from their community and friends about any particular verdict, you know, that can weigh on people

And so, I think you have to consider that in any such a trial.

And of course, not that having it televised would eliminate that problem.

But we spent a lot of time particularly in a trial that involves a sensitive issue--of building up the jury so that they will make the right decision based on the facts and the law, not based on any prejudice they have and not based on any prejudice they think they will feel from their friends and neighbors.

Mr. Mecham. Mr. Serrano, an amplification of the Judicial Conference policy. The Judicial Conference may be the national policy making body of the Judiciary, but it has no order making authority.

So the only teeth that really apply in the cameras area is when the circuit councils adopt a resolution embracing the policy of the conference in this area, which virtually all the circuits have except yours.

And there are a couple of instances where trials have been held, I think by Judge Sweet and a couple of others up in your area. You might have the opportunity to observe the impact some day

Mr. Serrano. So that decision is basically left up to the judge, then, right

Mr. Mecham. Circuit council, which has statutory authority.

RECRUITMENT OF MINORITIES

Mr. Serrano. Let me ask you one last question here. I asked this of Justice Kennedy last year and I will ask him again when he testifies next week and now I will ask you: What progress are the courts making in hiring qualified minority clerks and other professional staff? What type of outreach activities are you conducting to make service in the Judiciary appealing to minorities looking to enter the job market

Judge Heyburn. I think one thing--there are a number of things that I think are being done nationwide.

Recently, within the last year, the way that law clerks are being hired, I think, is being opened up in two ways: Number one, we have on the judiciary web site a law-clerk part of the web site, so that the information about how to apply, what positions are open and all that information is much more available to everyone.

And it may seem like that is not very important. But I think that getting a law clerk's position is very competitive. And if you do not get the information out, it can be sort of the province of a select few.

And I think the broader information you get out about how you can apply and the availability of it is very helpful to judges. We get a broader selection from which to choose from.

The second thing that has happened just in the past year is that a number of judges got together and said that the whole process that we are using to hire law clerks is happening way too quickly and that we ought to move it back. And so now--and it is for the first time this September, we will be using this new process.

It used to be that law clerks were being hired after only one year of law school. And basically the way it worked is if you got to be on the law journal your first year and did well your first year, then you would apply for a law clerk's position. If you did not, it was sort of out of sight, out of mind because it would be over in six months.

And everybody perceived, the law schools and the judges perceived, that this process was occurring too early and we need to move it back. So starting this September, almost all the federal judges in the country have agreed that we are not going to hire law clerks until they are beginning their third year.

And the impact of that will be that more people will be involved in the process. It will be more open to folks. And I would think that that would help everybody and I suspect there will be more minority applications because of it. But it is just a suspicion on my part. But I think the more open we get it, the more informed the law students are. And when it is later in the process, there are going to be more people who

will know about it and be involved.

Mr. Serrano. Well, a couple of years ago when I asked Justice Thomas this question, his answer was really interesting. He said, ``Well, the schools we go to do not give us any candidates.'' I said, ``Who do you go to?'' He said, ``Harvard and Yale.'' I said, well, try some other place. There are other fine schools that have a more diverse pool.

Because if you go to a certain place, then you are playing into the problem they have, which is a question for another hearing in another committee, about their lack of diversity

Director Reyna, how about in your agency. Has something special going on to recruit minorities?

Mr. Reyna. Yes, Congressman. One of the things that we are trying to do is to extend our recruitment efforts into the various programs that we have that obviously would allow us the flexibility to distribute the information to minority applicants. And we do have that ongoing at this time.

Mr. Serrano. Okay. Mr. Chairman, I have some other questions that I am going to submit to the record because I know you are trying to get out of here in the next five minutes

Mr. Wolf. Actually, I am not. We are going to move this thing around. I mean, we live here and we are not ready to go anywhere. [Laughter.]

Does not start until seven.

Mr. Serrano. Just for any reporter in the room, clarify that. You live here. My Washington residence is locally, but I live in the Bronx

Mr. Wolf. No, I said, I live here.

Mr. Serrano. Oh, no, no, you said we live here.

Mr. Wolf. I live here. [Laughter.]

And I do not have a dinner until 7 o'clock tonight on the way home. So I am--we are okay. No, I am just kind of teasing--

--

Mr. Serrano. I love this guy.

Mr. Wolf. On the question of televising, I was going to ask a question kind of leading into that, but the Congress did direct that the McVeigh hearing be televised for the families.

And Moussaoui case, and we carried language in our bill in the supplemental, directing the Judiciary to televise the trial for the families.

Mr. Serrano. For the families, not for anybody else.

Mr. Wolf. Closed circuit.

Mr. Serrano. I just do not want to see that break away every two seconds, we break away.

Mr. Wolf. No, and I think after watching the O.J. Simpson case I think that was very, very bad and gave the Judiciary, quite frankly a bad name.

There may be some cases that would be educational, because the public sees the network shows on district attorneys and they are in court for 10 minutes and you think that is the way it really is, so there may be a time that it may be appropriate to televise cases.

INDEPENDENT REVIEW OF THE JUDICIARY

Has anyone ever--and I have to be very careful. I have great respect for the Judiciary, and I do not tell the

Judiciary how to operate, and that is what we have always tried to do as much as we possibly can fund your request.

But has anybody ever performed a top-to-bottom evaluation maybe done by senior judges or retired judges with a foundation such as the Gates Foundation to study the operation of the Judiciary. Are there things that could be done differently, wiring all the courthouses, so that everybody can go on and every courthouse is wired so that a judge in Utah can communicate to a judge in--and different things like that.

Has anyone ever done a top to bottom review?

Mr. Mecham. We have got a national network, local networks, every judge can communicate with every judge, every court employee can. Judge Heyburn may want to elaborate.

Judge Heyburn. Well, I think that, I do not know about the top to bottom look, but we certainly in our court I can tell you that we are very concerned about optimizing the ability of the public to access what we do, not only keeping the courthouse safe but also open, but, for instance, we have our web site for our court, we put----

Mr. Wolf. Does every court have a web site?

Judge Heyburn. Not every court.

Mr. Wolf. You see, that is what I was thinking.

Judge Heyburn. I would say it is growing. It may be, I would suspect over 80 percent have a web site.

Mr. Wolf. Do you have a standard for the web pages?

Judge Heyburn. I do not think there is a standard, because there are 94 different districts, and they are all so different.

Mr. Wolf. Are all the decisions put on the internet?

Judge Heyburn. We put virtually all of our decisions on the web site.

Mr. Wolf. Is that in every district?

Judge Heyburn. Some of them do and some of them do not. It would--there are a lot of factors going both ways why you would want to do it, but almost all our judges put all our decisions, we put jury instructions----

Mr. Wolf. But why would you not want to do it? I mean, a dissenting opinion, a ruling----

Judge Heyburn. Well, obviously I believe that it is a good thing to do, because we do it. The reason you--the argument on the other side would be, is that you look at the books, we publish thousands and thousands of cases already, and there are too many cases that are published and if you want to know what the law is you can find it from the ones that are published, and you do not need all the other cases out in the public domain because they do not help that much.

I do not happen to necessarily agree with that, I think there is some value in having everything out there, even if it is not an official published case, it is out in the public domain and it is okay.

But, you know, there is an argument on the other side.

Mr. Wolf. Yes, that becomes kind of inside baseball, because then just the lawyers know.

Judge Heyburn. Right, exactly.

Mr. Wolf. You know, it used to be the Congress was not televised, and they said it was going to ruin the Congress. Quite frankly, it has improved the Congress.

There were times they would just photograph the chair or the person speaking.

I think televising Congressional debate has opened up the process. I personally probably would not favor television in a courtroom for a lot of reasons. Perhaps as I said the O.J. Simpson case.

But all court decisions could be put online--I publish my entire voting record, how I voted on every single vote that I cast in Congress. I put it online so everybody can access how I voted today, they will be able to go online and find out, they will not have to buy the Congressional Quarterly.

They will be able to find out. I am putting out a newsletter next week with my town meeting. I am putting that online with all of the issues that we are covering: videoviolence, hunger in Africa, transportation, and I think the more open it is--so that the layman understands, the better I can do my job. That is why I wondered if anybody had funded a--and I think the Gates Foundation or somebody like that would be appropriate, kind of a top to bottom review.

Judge Heyburn. And essentially we are following the same policy that you are. I mean everything the judiciary does is open. We are in the process, for instance, of creating electronic files so that all of our----

Mr. Wolf. Do you have pictures on your web page?

Judge Heyburn. Pictures of?

Mr. Wolf. Your pictures.

Judge Heyburn. No, I do not think so, no.

Mr. Mecham. I think the Marshals Service would encourage us not to do that.

Judge Heyburn. But we are in the process of creating these electronic files so it hugely increases the accessibility of our courts.

Because now, even, for instance, in my district, if you are not in Louisville, Kentucky, you are in a rural community, practicing in a federal court, and you will be able to have access to every single file--exactly what is going on, what happened yesterday, and you will be able to access through that process every single opinion and every single decision we make and the reasons for it.

There has also--been a lot of work done on how we can make jury trials run smoother, better and get the information to people through the jury process in a better way.

So, that is why we are improving our courtrooms. We just completed one in our district in which now you can present evidence electronically. That is the way people are used to getting information nowadays, and a jury trial is no different.

And it is going to improve the quality of jury trials. It is going to make them quicker, better, and the lawyers and the public, in fact, are demanding that sort of thing, and we are trying to keep abreast of that.

Mr. Wolf. I think it would be healthy to have an independent study of court operations. Every institution reforms and reforms within the institution. I do not mean to have it reformed from outside.

Clearly, I do not think the Legislative Branch ought to be telling the Judicial Branch how to run the courtroom. But we reformed--this body here--we made a decision that there would

be term limits for Subcommittee chairmen. I think it was very healthy. It forces a change. All the activities in the House are put on-line, and it opens up the process. I think people feel more part of it. And I thought if you had a foundation that was willing to do it, that might be a healthy thing to do.

I think I will just ask this next one for the record because--and I do not know, if Mr. Mecham, if you want to comment, or the judge, or the Marshals Service.

REPORTS OF DECLINE IN CRIMINAL FILINGS

There was an article in the paper here, that because of the shift--and this would probably be in this region--the shift in the FBI agents from traditional law-enforcement duties to counter-terrorism has resulted in significant reductions in the number of cases referred to the U.S. Attorneys in Washington to Baltimore.

And I assume that is not happening around the country.

And the FBI has changed. It is no longer the agency to gather the information, present the case, go in and testify, and get a conviction. It is--their number one goal is to stop terrorism.

And as a result of that, there are fewer agents working some of the traditional cases, and therefore, the U.S. Attorney in this region has had fewer cases, and the same in Baltimore.

But I would assume that is here, and not in other areas. Is that----

Judge Heyburn. Yeah, I think there are a number of things you have to bear in mind about that report:

Number one, the statistics nationwide do not bear out that there is a decline in criminal cases being brought. In fact, there is a--we had been seeing on the order of a 2 percent or 3 percent increase, and this past year it is 6 percent. Our projection is actually 9 percent for--in 2004.

Also, what the FBI may or may not be doing is only part of the law-enforcement picture. And it may well be that those cases in which the FBI is involved could decrease.

But there is INS, there is DEA, there is the Treasury Department--there are a variety of different--you know, we get our business, so to speak, from a variety of different sources, when you are talking about the criminal cases. And all of it is uncontrollable.

And in a number of those areas, even though the FBI may be focusing in an area which is vital but does not produce the cases, if you are talking about terrorism. There are other parts of government that are stepping up their efforts. And apparently, at least--I just read the numbers the way everybody else does, the numbers seem to be holding strong, if not increasing, accelerating, on the criminal side. So----

Mr. Wolf. Well, it might just be in this region.

Judge Heyburn. That could well be. And that is another--you know, that is exactly the problem that we with the Judiciary are always dealing--you talk about nationwide trends, but there are really no nationwide trends. There are 94 different districts, some of which are going up, some of which are going down. We have to deal with each of them and try to allocate the resources in the best way possible.

MARSHALS SERVICE WORKLOAD

Mr. Reyna. Mr. Chairman, if I may comment on your questions. One of the things that we see in the Marshals Service is obviously increased workload. And I can tell you, the Southwest border, for example: the number of immigration cases has increased dramatically. I am quite familiar with that, having been born and raised in the area. I am quite familiar with seeing that.

We, obviously, see that in our workload. We also see that as Judge Heyburn, you know, clearly indicated, there are also other agencies that have started other initiatives that also impact on the judiciary, on the Marshals Service.

So, the other thing, as we start looking at terrorist-related cases, and perhaps, certainly, terrorist-related trials, and maybe take Eastern Virginia, again, as an example. That is one case. That is one trial.

But not only--and I guess the point I want to make is--even though it is just one case and one trial, it consumes the entire district staffing.

Not only that, we have to bring in additional resources from other parts of the country to support that trial.

So we will see these types of trials. While they may be few, they are of the type that would create a significant impact on the United States Marshals Service.

You know, there may be a shift with the FBI and their mission, but there is enough work coming in from the other agencies.

Mr. Wolf. Well, there has been a shift here, though. It has been quite dramatic, the number agents--the Washington field office has reassigned. There is a March 4 Washington Post article, but it says the number of cases referred to U.S. Attorneys in Washington and Baltimore are dramatically down.

Judge Heyburn. And I think that is a nationwide shift. We were told, certainly in our district, and we are a backwater district in terms of where we think terrorism might be occurring.

But we were told that the FBI would be shifting resources as well. Now, they did not know whether that was going to mean there were going to be fewer cases brought or not. But it is certainly something that has happened nationwide in terms of a shift. You never know how it is going to turn out in terms of cases.

Mr. Wolf. Yes, I think this region, and I am sure up in New York City, there is an increase in CT efforts. Barriers, you know, Mr. Mecham, how this region has changed. If you had left this region 10 years ago and come back, you would see a dramatic change. And I think the Bureau--a lot of the people have been focused to combat terrorism.

If you could submit for the record the criminal filings per district around the country that we could take a look at and see how it compares to this region.

[The information follows:]

[GRAPHIC(S) NOT AVAILABLE IN TIFF FORMAT]

CAFETERIA BENEFITS

On the cafeteria benefits, your request includes \$16 million for the implementation of a cafeteria-style benefits. I understand the authorizing language is required for the courts to implement the program. And last year the House passed the Federal Courts Improvement Bill that contained the necessary authorization, but the Senate never acted. Are you working with the Judiciary and Government Reform Committees now to get that necessary authorization?

Mr. Mecham. We are indeed. Actually, the House Judiciary Committee, Subcommittee has already approved it for the second time around. And the Full Committee, I think, is ready to move on that. I have been in touch with Senator Hatch on the Senate side and some of the others. And we think they are going to move that bill earlier this time.

But we do need, as you suggest--because I think arguably, at least co-jurisdiction is in the Government Operations Committee. We need to do more there. We have cleared the House, but we have not in the Senate.

Mr. Wolf. Well, if I can help you, Tom Davis, my colleague from the adjoining district and a good friend is the Chairman of the Government Reform Committee and he could be of help.

Mr. Mecham. Great, thank you.

Mr. Wolf. Let us know.

Mr. Mecham. I appreciate that offer and we will.

Mr. Wolf. With that, which I think makes sense, why would it cost an additional \$16 million? Is your proposal to give the individuals choices within a specified amount or to increase the number of benefits? Is the food in the cafeteria getting richer? [Laughter.]

Mr. Mecham. My understanding is each person would get a stipulated amount and they could then allocate how they wish to have that amount used--whether it is for vision or dental or some other area.

Mr. Wolf. The staff pointed out that was the intention. Of course, it is above the current benefit.

Mr. Mecham. Oh, yes, I am sorry. It is definitely above the current benefits.

Mr. Wolf. So you will be adding benefits.

Mr. Mecham. Yes. Based on the studies we have made, people feel that the areas where they are most deficient in benefits for most people is vision and dental. So presumably that would be where a lot of it would be concentrated by each individual as they determine which way they wanted to dine in the cafeteria.

BANKRUPTCY REFORM BILL

Mr. Wolf. Bankruptcies, the Judiciary's request includes 400 additional FTE for bankruptcy courts to handle an all-time high number of filings. It is just frightening when you look at the number of bankruptcies. I do not know what it means. Is it realistic that the judiciary could hire 400 bankruptcy staff in fiscal year 2004?

Judge Heyburn. Right. I think if you look at it the 400 may

or may not sound like a large number. But let's look at it this way in terms of an individual district, you are talking about roughly, let's say, 100 districts. So even across the entire country, you are talking about three or four per district on average. So that makes it a much more of an accomplishable thing.

I think in many districts, there will be one or two. In a number of others there would be five or six.

Mr. Wolf. So you think you could hire nationwide 400 in 2004?

Judge Heyburn. Yes, we have done it before.

And the way, of course, it is priced out in the budget is that the average would be that they would be hired for--they would be on board for six months of that year.

Mr. Wolf. And what impacts will the bankruptcy-reform legislation have? That has passed the House and my sense is it will pass the Senate. What impact will that have?

Judge Heyburn. Well, one of the most significant impacts will be the fact that it authorizes 28 new bankruptcy judges. And that will be over time a significant driver--a driver of costs. I think over five years it will be something on the order of \$20 million.

Mr. Wolf. But will the statute itself change the filings?

Judge Heyburn. I think it will. I do not know if anybody has really estimated that yet. At least I have not seen any estimate of it. If you have a work requirement, you might end up with fewer bankruptcies. That is a possibility.

Mr. Wolf. Maybe somebody could look at that and see----

Mr. Mecham. There are some things in this bill that are going to impact your Committee and us, Mr. Chairman. Now maybe it will be a wash for you, but it will not be a wash for us.

Mr. Mecham. Another thing it does is that it lowers some of the fees by something in the order of \$25 million over a number of years. So it will be more work and fewer fees.

And that will mean what you will be doing is diverting money from us to the Justice Department. We would like to have you keep it with us if you could possibly arrange that. As much as we love Mr. Reyna's friends over there.

Mr. Wolf. We will try and do that. [Laughter.]

Mr. Mecham. We think we were outmaneuvered on this, by the way.

Mr. Wolf. Have you spoken to Senator Hatch about that?

Mr. Mecham. I have talked to Senator Hatch. I even talked to the Attorney General but I did not get much satisfaction from the Attorney General. And so far, Senator Hatch wants to get the bill through as it passed.

Mr. Mecham. He is worried about all of the collateral issues that are beginning to arise.

Mr. Wolf. Yes, yes. And I think they are doing basically the same bill but for one or two provisions.

Mr. Mecham. That is right.

Mr. Wolf [continuing]. And I think to go in and change it again could--although, they could deal with that issue in conference. It is really a fee issue more than it is a substance issue, isn't it?

Mr. Mecham. Yes, it is a fee issue in this case.

Mr. Wolf. Have you mentioned to Mr. Sensenbrenner?

Mr. Mecham. Yes, we presented that to the Committee, though we did not get very far.

Mr. Serrano. You sound like me. [Laughter.]

Mr. Mecham. We are going to lose \$19 million more in fees because of the bill's allowance for in forma pauperis filing. So that is \$19 million plus, \$25 million, plus you are going to require all kinds of nonsensical reports that the Judiciary does not need, but some commercial people do need it for their own records. Like having tax returns on the people who file and maintaining that.

And financial data, consumer debtors--we do not need that in the Judiciary. But there are commercial interests that do. And that is in there, and it is going to cost us money.

Mr. Wolf. Well, you make a good point.

I am going to have one last question.

INCREASING STAFF REQUIREMENTS FOR PROBATION AND PRETRIAL SERVICES

Yes, the Judiciary has requested for an increase of million for 441 additional FTEs for probation and pretrial service offices and an additional \$7.4 million for increased drug testing, and mental-health treatment. And Judge Heyburn, you mentioned electronic monitoring and other services.

What is the basis for the increase, and is there a higher number of offenders under supervision or are offenders released from prison more dangerous and require more supervision than in the past?

Judge Heyburn. Both. I think I covered that in my opening statement. We are doing everything we can to get people off supervision in an appropriate fashion when they no longer need to be under supervision.

But even with those efforts, the number on supervision is increasing. And the fact of the matter is that this is not a problem that can be solved in one year.

Because of the work of those who supervise comes from the group of those people who are currently in prison, who in the next year are going to be getting out of prison.

And what we see is that those people who are going to be finishing their terms, are those who have been in prison for quite some period of time, and we anticipate based on past experience, are going to need this kind of drug-abuse or substance-abuse treatment if we are going to complete the job of reacclimating them into society, which is absolutely vital.

We hope that that can be accomplished. So it is a tough job and we see that the numbers of those are increasing and the seriousness of their crimes are worse as a group. And that is the reason for these increases.

Mr. Wolf. Well, you make a good case.

Judge Heyburn. I wish it were otherwise--but that is the way that it is.

Mr. Wolf. Yesterday we had the Justice Department up, and I asked them would they speak out on the whole issue of violence? Have you ever seen the violence in some of these video games, Grand Theft Auto--have you seen the violence?

Judge Heyburn. I have seen it and I try to keep my son from watching it.

Mr. Wolf. I did not know anything about it until somebody

brought a copy to my office. And the fact is if you want to learn about it, go on my web page and I am doing a piece in my newsletter about the violence on video games and Grand Theft Auto. Della Reese did a show on ``Touched By An Angel'' two weeks ago, where they do a story about two young boys who get involved in the video game violence.

I had heard that the case down in Paducah, Kentucky that that youngster had never fired a rifle before and learned eye-hand coordination through the video and some of these violence.

And Grand Theft Auto, you get more points for head shots. The industry has been totally irresponsible. They have allowed these things to be sold without adequate warnings for parents.

Parents may be buying video games not really knowing what is on there. The lobbyists for the industry made a comment. And Mr. Baca has been trying to address this issue.

Judge Heyburn. We have more people on supervision now than there are in the Federal prisons out there.

Mr. Mecham. Very close.

Judge Heyburn. And it is a big part of what we do. And, interestingly, it is a bigger part of my job actually, because with more people on supervision, it is increasingly the case that we spend part of our day deciding if someone has had a positive drug test or if someone has breached their supervision in some way, whether they should go back to prison or not.

And these are really tough decisions because your prayer is if they spent five years in prison that they are going to then get out into society. They have families--spouses, children--and your hope is that they will accomplish this transition, and you are faced with these decisions. It is taxing, but it does take up your time.

I would say five years ago the amount of time that I spent on that was minimal and now it is significant.

Mr. Wolf. Well, that is got to be difficult.

Judge Heyburn. There is more change in how our job is involved.

Mr. Wolf. You must have nights you go home and you say to your wife, you know, ``There was a case today that----''

Judge Heyburn. That is why many of the families get broken up. I mean, you wish you could do something.

ALTERNATIVES TO DETENTION

Mr. Wolf. I have a bill in that we are going to pass in the next couple of months and have signed into law to deal with the problem of prison rape. Thirteen to 20 percent of men who are sentenced to prison are raped. Some of the stories are so unbelievably abusive and intolerable; and now the Administration supports the bill. We have the support from Chuck Colson, the NAACP--Senator Kennedy and Senator Sessions are the sponsors on the Senate side and Congressman Scott and myself are over here in the House side. And I think Mr. Sensenbrenner is going to give us hearings and the Speaker is committed to moving it.

I mean, at times, you wonder, ``Am I sentencing this young person to go into a condition''--and, you know, I do not think I would want to have to make that decision. I think it would be very tough. I think somehow, too, you ought to be doing a study on the drug sentencing issue, because my sense is--and this is the second time today I will say it--Mr. Serrano is a liberal

Democrat, but he said I did not go far enough to the left.

I am a conservative Republican. But there are some senses-- I mean, having toured the federal prisons, the number of prisoners that are in there maybe--and I commend the Bush Administration for more money in SAMHSA and more money for rehabilitation, but there may be a way of dealing with this issue after a certain period of time, 53-55 percent of the people in prison are in there for drug-related cases. A number ought to be in there for drug-related cases, but there are others that there may be some other way of dealing with it.

And I think that the Judiciary ought to be looking at that issue and maybe the Judicial Conference may look at the issue and see if there are some offenders that could be put in halfway houses or rehab programs rather than putting them into prison, whereby brutal things may very well take place. And you might want to provide some leadership on that issue.

Judge Heyburn. You would need to talk to the Attorney General about that.

Mr. Wolf. Well, I think everyone is afraid to take it up.

Judge Heyburn. Well, I think from a district judge's point-of-view, and we are the ones that are on the front lines on this.

Mr. Wolf. Do you agree with me?

Judge Heyburn. Yes, I do. These are difficult things. In a way, the sentencing guidelines, in some ways, makes our job easy because, on occasions, we simply have no choice but to do certain things.

But I think even with the difficulty, most of the judges do not mind the sentencing guidelines--I do not--but at a certain level, we would like to have the flexibility to deal with these questions.

You know, just personally, you would like to have the option--if the sentence is going to be a year in prison, you would like to have the option of whether that should be and could be satisfied in a halfway house, where there are all kind of family factors that come into play. And so many of these defendants are so different.

Many of these people--it is hard to generalize, but some people are simply in the wrong place at the wrong time. Some people have the wrong kind of friends and they do not have the willpower to say no to them and then they get themselves in a situation where, they are suddenly facing prison time.

It is tough to differentiate between those who are the truly evil ones and are potentially harmful to the rest of society and those who are, as I say, have the wrong kind of friends or are in the wrong place at the wrong time. That is a tough job, but it is our job; and, to a certain extent, we know Congress sets the penalties and that is your obligation to do so. That is a tough job in and of itself.

Mr. Wolf. Well, maybe the Judicial Conference should do a study and make a recommendation to the Congress on that issue.

Mr. Wolf. I mean, you would know more than anybody else.

Judge Heyburn. Well, you know, the probation officers, the people in the Bureau of Prisons----

Mr. Wolf. Well, the whole court system.

Judge Heyburn [continuing]. Have done a lot of research about this. And you know, many judges have strong feelings.

But, on the other hand, many of us feel that, we need to focus on enforcing the law and we have a certain amount of experience. But on the other hand, we do not want to inject ourselves in an area where we know it is really the prerogative of Congress.

Mr. Wolf. Well, Congress may not completely understand. And as a compassionate conservative.

Mr. Serrano. What is that?

Mr. Wolf. I am a conservative.

Mr. Serrano. I am agreeing.

Mr. Wolf. And being very tough on the issue of crime, I think, it would be helpful to the judges. And your independence provides you an opportunity to take a slice and speak out. You have a lifetime appointment.

Mr. Serrano and I have to run every two years. And I think the independent Judiciary does give you an opportunity to speak out.

And I think to have a study done, particularly maybe by some judges that are tougher than judges that are not to make some recommendations and see what recommendations could come up. And I think that Congress would be glad to entertain some suggestions.

Judge Heyburn. Well, one of the things you find that is in our request is the United States Sentencing Commission. And they do studies. The probation office does studies. The Justice Department does studies. And, I mean, I could not agree with you more. As you know, these are difficult questions and it is not my brief to come here and discuss this with you. I have my own opinions about it, but my purpose is to adhere to another one.

Mr. Wolf. No, you could educate us.

Judge Heyburn. Yes. And there are many judges who speak out very forcefully on both sides of this issue, as you know.

Mr. Wolf. Well, Mr. Mecham, you could send us some of the opinions on both sides. I mean, it is an issue that I have been concerned about. I have been in the prisons. And I have seen some of these young men that I believe that at a certain time would be better in a halfway house with a family around them than they would be in prison.

And when you overlay this--are you aware of the prison rape problem in prisons?

Judge Heyburn. I am aware of it. I am ever mindful that whenever you send someone to prison, there are some good things that can happen and there are some bad things that can happen. And those are things you have to take into account.

Mr. Wolf. Well, the Committee will send you the material that we have. Thirteen percent of the men who go to prison are now raped. There was a Nebraska study, 21 percent in the Nebraska prisons.

Judge Heyburn. And think about the effect that that has. Where do those people come out of prison? They are under supervised release and think of the difficulty they have readjusting when that has happened.

Mr. Wolf. Well, the studies show that they do horrible things.

Judge Heyburn. Right. And that is why they are the people that our probation officers are trying to bring back into

society.

Mr. Wolf. Well, I would appreciate your sending this as quickly as possible.

Mr. Mecham. We will do what we can.

OXYCONTIN CASES

Mr. Wolf. But as I recognize Mr. Serrano, have you seen many cases that have come into your court in the last several years on OxyContin?

Judge Heyburn. No, I have not.

Mr. Wolf. Would they mainly be brought in the State and local courts?

Judge Heyburn. They might be in State courts. And they also might be a nationwide class action to some extent.

Mr. Wolf. The number of OxyContin abuse cases down in Southwest Virginia and Kentucky and Mr. Rogers' district has been a major, major problem.

Judge Heyburn. I am in the Western District. And the cases from his district would be in another district court.

Mr. Wolf. So you have not seen anything?

Judge Heyburn. I have not seen them.

Mr. Wolf. Okay. Mr. Mecham, if you could see if there are many cases that you have had in the Federal court dealing with the issue of OxyContin?

Thank you both, all three for your testimony. We appreciate it. We will try to help as much as we possibly can. And with that I recognize Mr. Serrano.

CAPITAL REPRESENTATIONS

Mr. Serrano. Well, just to echo your comments and just to comment on a few of the things you said.

I too will do whatever we have to on this side to make sure that you get funded properly. Having my way, I would not fund a penny to impose a death penalty, but that is another issue. I know you said that that was a new cost that you have with the Attorney General.

Judge Heyburn. That was a cost to defend those who were charged.

Mr. Serrano. Oh, to defend.

Judge Heyburn. Yes.

Mr. Serrano. Okay. Then I will support tripling that.

[Laughter.]

I will bring it up.

Judge Heyburn. Yes, you did come in the middle of that discussion. We are requesting an increase in the panel rate, because we think it is so important that they get an adequate defense.

Mr. Serrano. Yes. I always remember former Governor Mario Cuomo's quote, you know, ``We kill people who kill people to show that killing is wrong.''

Mr. Serrano. And that is a--I also want to compliment the whole Judiciary. That is one thing I could never do. I could not do law enforcement, or be a judge because that takes a special talent and a special ability that I just do not have. I mean, it is tough being----

Judge Heyburn. I think you played the role of a judge very well the one time that I saw you.

Mr. Serrano. Yes, I did. I did. I just got a three-dollar check for that. They keep playing that role.

Mr. Wolf. I missed that. What was it?

Mr. Serrano. A long time ago, I got a call. I was quoted in a newspaper saying that--they said, ``If you were not doing this, what would you like to do?''

I said, ``I would like to be on tour with Frank Sinatra--singing, acting or playing center field for the Yankees.''

So, ``Law and Order'' gave me a call and said, ``Would you really like to read for a part''?

Mr. Wolf. Oh really?

Mr. Serrano. So, I read for a part. And I played a judge.

Judge Heyburn. He was very good.

Mr. Serrano. Now, this is interesting. I tell you something very interesting.

Judge Heyburn. I did not mean to bring up a sore subject, but you know.

Mr. Serrano. And Director Reyna, you will appreciate this, as much as I would or anybody else, for that matter.

But I said to them, ``I have got to ask you one question. They said, ``What is it?''

``What kind of a role is it am I going to play?'' Because they told me, ``you are going to play a Hispanic judge.''

I said, ``Am I going to play, like, a drug-dealing judge, or a corrupt judge? [Laughter.]

Because I, I am not going to do it, that is not what I want to do for my community.

He says, ``Well, there is a problem. He is a very liberal judge.''

I said, ``Ha, ha.'' [Laughter.]

``The part was written for me.'' [Laughter.]

So, I played it, and I threw a case out because the police looked in a car, and so. That--they have played it ever since. But I could never be a real-life judge, because what you do is really special.

I could be a Supreme Court justice, that is a different---- [Laughter.]

Mr. Wolf. We may not want you there. [Laughter.]

Mr. Serrano. I know you do not want me there. I would actually interpret the Constitution, and that would be a whole different thing. [Laughter.]

That would be a whole different thing.

But let me just tell you that I really think that at the end of this whole process, or as this process on this fight on terrorism continues to develop--the courthouses, the courtroom, the chambers, the trials will become such an important part of this whole issue.

And the three of you represent will be extremely important to us, and I want to commend you for the work you do. I want you to keep in mind that I will continue to support you.

On the issue of minority hiring, for all three of you. Keep in mind, if something happened in this country, wonderful, after September 11th, any federal agency you talk to will tell you that the increase of minority people, Mr. Chairman, who applied for jobs--sort of a statement, I think of patriotism.

Of saying, you know, ``My country was hurt. It was attacked. I want to be a Marshal. I want to be a Marine. I want to be an FBI agent. I want to work for the State Department.''

People are applying, Secretary Powell told us yesterday that something like, you know, 24 percent or 34 percent of the people who passed the exam this last time were minorities

Well, that is a statement about the people that are applying.

So, this hiring is not--this is not a contract for jobs that I bring up. It is a fact that there is a community out there that took a hit as much as anybody else in this country and now wants, in a new life, to participate in our government's life.

So, when you hire people, and you bring diversity, you are doing it at a time when people want to be a part of the society, of the country, of the government.

And, with that in mind, I only have one disagreement. You know, I hardly ever disagree with Chairman Wolf. But, I am troubled also, because, you know, liberals and conservatives meet. It is like a circle.

We meet on privacy issues. You know, when Dick Armey left Congress--this very conservative majority leader--he said two interesting things. He said, ``I want people in my private life,'' and then he also said Ashcroft was going crazy. But, you know, I wish I could get a better quote on that. And that shows you how concerned he was.

I agree with the chairman that there is this whole issue of the violence in the video games that we have to begin to look at. And my son will probably hate me for saying that, my 14-year-old. But, there is.

But, at the same time, you know, we adults on CNN and Fox News have shown for the last seven or eight days, that when adults have a problem, they settle it by going to war.

And so, at the same hearing, I would like to have some psychiatrist, yes, what effect have the video games had on the violence in our society? But what does, you know, under the name of our country's security, seeing all this violence do, also, to children, when adults settle it by declaring war on each other? Be it a terrorist attack on us or a response that we do?

So, with that on mind, you know, we will be here to assist you in any way that we can. We commend you for your service, and we look forward to seeing you soon.

Thank you.

Mr. Wolf. My pal, Joey--Judge Serrano. Pal Joey--get that? Frank Sinatra--Pal Joey. [Laughter.]

Mr. Serrano. That is my e-mail address.

DEPARTMENT OF JUSTICE SUPPLEMENTAL REQUEST

Mr. Wolf. I did not know that. Director Reyna, one other statement or question. The Administration sent up the supplemental for \$500 million for counter-terrorism funds, they provided the Committee with one page of backup for justification for the request. One page.

Of that \$500 million, how much does the Marshals Service expect to get?

Mr. Reyna. Mr. Chairman, we submitted, you know, a request through the process, you know, the Department of Justice.

I do want to point out that the Attorney General and Deputy Attorney General have been very supportive of the Marshals Service. And we are one out of the three components----

Mr. Wolf. Of the \$500 million, a one page justification, which is totally not appropriate. One page, \$500 million. But of the \$500 million, what is your expectation?

Mr. Reyna. At this time, I do not know, Mr. Chairman. That is being worked through the process to put our request in.

Mr. Wolf. I do not see how the Justice Department can then expect, under a separation of powers, just to send up a request \$500 million with one, page of justification. I mean, the fact that you really cannot tell us is an indication that they really have not done their homework. I think this Committee will be very supportive of the Administration's request. But I think it is fair that the Committee know where the money is going to go, but not just to have a half a billion dollars to the Justice Department to put wherever, ever they want to do it.

And so you do not really have any indication, assuming this Committee were to rubber stamp and give \$500 million with no earmarks whatever, you do not know how much of that the Marshals would receive.

Mr. Reyna. Mr. Chairman, see now, we have to work through the process in developing those budgets for the Department of Justice. And I can assure you that the focus on our request is protecting the Judiciary. And we certainly, you know, think it is important to recognize that we are one of the three components that----

Mr. Wolf. I understand that but one page not specifying where it would go, I just think that is just kind of a--I just do not think you can do that

So you have--you have no number that you would expect to get out of this \$500 million, if any?

Mr. Reyna. We do expect some funding. You know, we have submitted our request that has focused on the Judiciary, but it is another decision that is made through the process and through the department.

Mr. Wolf. But do you really think it is appropriate for the Administration just to send up a \$500 million request on one page with the idea that they will be able to say where it goes?

Mr. Reyna. Mr. Chairman, I certainly understand your question, but I do want to state that we do follow the processes of the Department of Justice. And it is the department that makes those determinations. But as far----

Mr. Serrano. Will the gentleman yield?

Mr. Wolf. Sure.

Mr. Serrano. For the record, I am also concerned about the fact that \$62 billion of the supplemental is to go to the Pentagon to use as they see fit. So this whole process that we are faced with now is a lot of--``Trust me; we will know how to spend it.'' And that I think that--I mean, I know that Mr. DeLay was quoted this morning as saying that there are serious problems with those kinds of situations where we are just told \$500 million and we will spend it as we see fit. And \$62 billion to fight the war. And now we hear it is only for 30

days. So it is a lot of difficult days next week.

Mr. Wolf. I know I agree with Mr. Seranno, I think you really need--the Administration and the Justice Department needs to specify where the money will go, what it will be used for, to be held accountable because of the separation of powers; otherwise the whole Congressional oversight becomes almost irrelevant.

And as a Republican who supports the Bush Administration, some time later it could be another Administration that you did not support. And so, therefore, there needs to be the justification. And the fact that none of the agencies can say how much they would get, literally turning over all of this authority to the Administration. And I just do not think that is a good idea.

Mr. Mecham. Can I ask a question before you close?

Mr. Wolf. Yes.

Mr. Mecham. Could Judge Heyburn's statement and mine be submitted for the record as----

Mr. Wolf. We will take care that----

Mr. Mecham. Out of mercy, we abbreviated our statements.

Mr. Wolf [continuing]. All three statements will be in the record as if read. And we appreciate all of you, and thank you very much

Mr. Mecham. Thank you.

Judge Heyburn. Thank you.

Mr. Reyna. Thank you, Mr. Chairman.

[GRAPHIC(S) NOT AVAILABLE IN TIFF FORMAT]

Wednesday, April 9, 2003.

SUPREME COURT OF THE UNITED STATES

WITNESSES

JUSTICE ANTHONY M. KENNEDY, SUPREME COURT OF THE UNITED STATES
JUSTICE CLARENCE THOMAS, SUPREME COURT OF THE UNITED STATE
SALLY RIDER, ADMINISTRATIVE ASSISTANT TO THE CHIEF JUSTICE
PAMELA TALKIN, MARSHAL
BILL SUTER, CLERK
TONY DONNELLY, DIRECTOR OF BUDGET AND PERSONNEL

Opening Statement

Mr. Wolf [presiding]. Good morning. The hearing will come to order.

I apologize for being a few minutes late, although I know where both of you live. I do not know what time you left this morning, but there was a lot of traffic on the G.W. Parkway and the 14th Street Bridge and the Memorial Bridge--so I do apologize. But I know you understand.

The Committee will come to order.

We want to thank Justice Kennedy and Justice Thomas for appearing before the Subcommittee to discuss the Supreme Court's fiscal year 2004 budget request.

An independent judiciary, trusted and respected by all

citizens and committed to fairly and expeditiously resolving difficult and controversial questions is a fundamental tenet of our nation. We will try to ensure that you have the resources needed to accomplish this important mission.

For fiscal year 2003, the Committee was able to provide the Supreme Court a 14 percent funding increase for the Court's Salaries and Expense account and was able to continue funding your building renovation project. In addition, the House-passed fiscal year 2003 supplemental includes \$1.5 million for Supreme Court police enhancements.

For fiscal year 2004, the Court has requested an increase of more than 25 percent over the fiscal year 2003 enacted level for your operating account. Thankfully, this increase is offset by a \$24.5 million decrease in funding required for completion of the building renovation project.

As you know, the budget outlook for fiscal year 2004 is very difficult. The Subcommittee's allocation is likely to be very tight for fiscal year 2004 and funding this percentage of an increase for the Court's operating budget may be very difficult. However, the Committee will do its best to continue to fund the Court's building renovation project and fund the Court's most pressing needs in its Salaries and Expenses account.

With that, we would like to welcome you again and recognize Mr. Serrano, the ranking member.

Mr. Serrano. Thank you, Mr. Chairman.

I would like to welcome our distinguished guests.

With the presence of two Supreme Court justices here today, there are many topics I might choose to address in this, my opening statement. However, I will, once again, focus on an issue that we have spoken of in past hearings and that I have discussed with you in the past and that is the protection of our civil liberties.

Many citizens have become increasingly fearful that our government may go just too far; that we may adjust our priorities so much in order to catch the bad guys that we overly impinge on the rights of the rest of the general public.

Certain agencies have suggested or even begun programs that, in my opinion, seriously threaten the civil liberties guaranteed by our Constitution. In addition, certain laws passed by Congress threaten to do the same thing.

And so I take this opportunity to remind the distinguished Justices here that they are a vital last line of defense against overreaching acts of the other branches of government. I respectfully urge you to remain conscious of this duty to review any laws or actions that threaten these rights most carefully.

When it comes to fighting terrorism, we are all on the same side. But the Supreme Court must remain a protector of the rights of individuals, in spite of government's desire to catch criminals. Please do not let our Constitution be trampled in the name of fighting terrorism.

With that, I thank you for your attendance at today's hearings. I look forward to working with you. And I assure you, as I have in the past, that I will join Chairman Wolf and the members of both sides of this committee, to make sure that you are treated with respect, and that you get the resources that

you need to do your job properly.

Thank you.

Mr. Wolf. You may proceed as you see fit. Your full statements will appear in the record.

Justice Kennedy. Fine.

Good morning, Mr. Chairman, and members of the Committee.

Justice Thomas and I are pleased to be back again with you. We bring you greetings from our colleagues.

We have a number of our staff here: Tony Donnelly, budget and personnel officer; Sally Rider, administrative assistant to the Chief Justice; our clerk, General Bill Suter; our marshal, Pamela Talkin. And I see Kathy Arberg and Ed Turner, our public information officers here.

I might say sometimes people say that Congress and other agencies of the government depend a lot on their staff, and they say it in a derisive way. But you cannot run a Committee with these heavy responsibilities and complex issues without a very talented and dedicated staff.

Over the years (and particularly in the last two years, when we have been going through the budget for our building renovation project), Mr. Chairman, the relations between our budgeting people and your staff have been just excellent.

They talk on an ongoing basis. This really gives you some oversight through the course of the year as to how we are doing. And they talk about what our needs are, how they should be classified for budgetary purposes. And we trust your staff very much and we rely on them. I ask you to give them our personal thanks for the courtesies they always show to us.

Mr. Wolf. Thank you.

SUPREME COURT SALARIES AND EXPENSES

Justice Kennedy. As you indicated, Mr. Chairman, if you look just at the formal request that we have before you today with a budget of \$56 million, in round numbers, and an increase of \$7,300,000, it is a 15 percent increase. But if you add the supplemental increases, it becomes 24 percent.

When Congressman Rogers was the Chairman of this Committee and I appeared before him in 1988, I was asking for a budget of about \$15 million. And in thinking about why we have the increases, most of these things are obvious to you who hear budget requests from agencies throughout the government. You know about adjustments to base and you know about program increases. Our program increases in the last two or three years have been driven by an increase in the police force and the pay of our police and secondly, and to a much greater extent, by our information technology systems.

The supplemental appropriation of \$3.786 million is, we think, urgent because this contains the authorization, not only for our police parity, but for our hardware. Our hardware has reached and really exceeded its limits.

One of the things we have done since I first came before this committee and before then-Chairman Rogers is we have made the court open to the citizens of this country through our information technology. We have 70,000 hits a day on that web site. That is 2,100,000 a month.

I have not talked to the judges on the Court of the

European Union or the European Court of Human Rights, but my conjecture is that we are the most open court in the world. We give more information on our history, on our current issues, on our docketing, on our cases under consideration than any court in the world. And we are very proud of that

The information technology systems we request, of course, are both for the infrastructure that the public never sees, and for this more public function of making information on our institution available to all who seek it.

The payroll functions, our inventory, our internal accounting mechanisms need upgraded hardware.

Then we get to our library. We have one of the really finest law libraries in the world. And all of this is information technology--electronic technology now.

Then we have our clerk's office, which has automated all of our systems for filing the briefs, records and motions that come before the court.

And then, of course, there is the publication of the opinions, which is all electronic. Our opinions are available almost immediately--within the hour--after we announce them to the Bar and to the public at large.

We find we may have been too conservative in the past on asking for the adequate hardware. Some of the machines we are using are not even currently serviced. Part of the request is for funds for outside contracting so that we have outside advice for all of these upgrades, but our goal is to be able to run them in-house. And the authority that we have requested will enable us to do that.

I think that suffices for an overview, Mr. Chairman.

Oh, I probably should say, you know, we did ask for 27 new positions. Of those, 13 are police; seven are technical people, mostly in the information technology area; and seven others are for non-technical, but we think very essential people in payroll, the clerk's department and two laborers.

With that, I will close my remarks and ask my valued colleague, Justice Thomas, if he has anything he wishes to add.

[The information follows:]

[GRAPHIC(S) NOT AVAILABLE IN TIFF FORMAT]

COURT AUTOMATION

Justice Thomas. Good morning, Mr. Chairman.

Members of the Committee, as in the past, I am honored to appear before you. And we both always appreciate your courtesy and enjoy working with you and your staff.

Prior to coming into the Committee room here, in a chat with one of the staff members, I remembered that I was responsible for bringing the first PC into the EEOC in 1983. A lot has happened since 1983. And quite a bit has happened in my 11 plus years on the court.

Six years ago when we requested budgets, I think we had about 150 or so computers. We now are close to 600 PCs. We have two networks now, as opposed to one, and, of course, more sophisticated equipment.

And in addition to the hardware that Justice Kennedy spoke

about, we are at the obsolescence point for our software. Everything has to be moved over from Windows 97 to XP operating systems. Now that sounds simple, but on that many computers, as well as security problems, it is quite a change.

We have made quite a few gains, but as I have said to this committee in the past, we have never caught up and that is still a problem for us. And each year it is going to be more expensive to catch up. At some point, we simply have to be current in order to not have the problem of coming to you for additional significant increases in the technological budgets, as opposed to just a support budget.

The ongoing issues of security, of support, of updating hardware and keeping them current are basically what you see here. There is no fat. And I understand that the Committee has its difficulties with its limits on the budgets. But, as I have said in the past, these requests are consistent with the Court being able to do the sorts of things that it is required to do.

With that, Mr. Chairman, once again I simply say that it is an honor to be here and to have the opportunity to work with you in order to see to it that the court is able to function appropriately.

Justice Kennedy. We feel very comfortable looking at the seal of the Supreme Court of the United States. I do not know if we sold it to you or if you bought it. [Laughter.]

Mr. Serrano. You do try to sell it to use. [Laughter.]

Justice Thomas. Yes. [Laughter.]

Justice Kennedy. Let us see: I have the cost right here. [Laughter.]

\$54 million, Congressman. [Laughter.]

SECURITY

Mr. Wolf. Thank you both.

With regard to security, what additional security measures does the Court implement when the threat level is increased to orange or red?

Justice Kennedy. I am not entirely comfortable talking about it. I mean, we do have contingency plans to carry on court operations at other places, which we did once with the--

--

Mr. Wolf. Yes.

Justice Kennedy [continuing]. Anthrax scare. We have an increased presence both on the perimeter of the building and on the interior of the building.

Our new systems that we are installing in the renovation will have adequate and state-of-the-art air filtration systems.

And, as with most of the government and most of the rest of the American society, we have a heightened awareness of security measures. We want the people that come to the Court-- and we still have over a million visitors a year--to feel secure and to be secure.

We are more careful about screening people that enter the building and we do it more than once. And our budget includes some upgrades for security equipment on a temporary basis, even before we install the equipment in the renovated building.

Mr. Wolf. What relationship do your police have with the Capitol Police?

Justice Kennedy. They are independent.

Mr. Wolf. Do they meet?

Justice Kennedy. Oh, sure.

Mr. Wolf. On a constant basis, like every Monday?

Justice Kennedy. I cannot answer that, Mr. Chairman. I will find out. But, for instance, when we came here today, the Capitol Police were with us when we came over. And they are on a network that talks to each other. And one of the requests in the budget is that we have pay parity with the Capitol Police. Ours is a little bit below that now.

There, apparently, are regular security briefings in which our chief and the chief of the Capitol Police work very closely.

Mr. Wolf. The House-passed fiscal year 2003 war supplemental provides \$1.5 million for 13 additional Supreme Court officers and related equipment. The Senate version of the bill does not include this additional funding. Can you explain what activities these 13 additional offices will perform? And why is this funding needed?

Justice Kennedy. Our police actually recommended close to double that number and we thought it was too much.

Mr. Wolf. How many do you currently have?

Justice Kennedy. We have 121.

And, of course, it is a 24-hour, seven-day-a-week responsibility to secure the perimeter of the building and the interior of the building.

We are very careful about visitors in our building. And, as I indicated, we want to be open. On the other hand, we are dealing with cases which have huge financial consequences. And we must be very careful about security. So our police are simply excellent about knowing who the law clerks are that are current. Law clerks, sometimes, from previous years come and the police immediately know that they are not to be admitted to the interior halls of the Court.

Our own police take care of the security for the justices and work with the United States Marshal Service whenever we are outside Washington, D.C.

PERIMETER SECURITY

Mr. Wolf. Last summer, in the supplemental, the Committee provided \$10 million to enhance the Court's perimeter security. Have the funds been obligated?

Justice Kennedy. I do not know if those funds have been obligated. I do know that they are working on the design. We are concerned, as I am sure many of you are, that what is now a beautiful, open building does not look like a fortress. We have a small wall, which is actually behind an existing hedge that we have planted. We have benches and we have some very attractive ballards. I actually think it is going to define the perimeter of a great building and make it look better.

But the architects have not signed off on the plans and the judges have not signed off. Our instructions are to make it adequate, but yet still not domineering or oppressive.

And I might say, Mr. Mike Turnbull of the Architect of the Capitol's Offices is here to present our buildings and grounds budget.

You asked me if they have been obligated yet, Congressman, I do not know the answer to that. The funds for design have been obligated, but not for the actual work.

Mr. Wolf. Okay. And have they been coordinating the firmer security efforts with the other security enhancements in the Capitol complex? Because you can look from the new visitors' center to the Supreme Court. It is just one narrow street.

Justice Kennedy. It is.

Mr. Wolf. Have they been coordinated?

Justice Kennedy. They have been. As I have indicated before, I wish there had been more thought given to the transportation needs in conjunction with the new Visitors' Center. There is going to be a huge underground tunnel on East Capitol. It will be almost--it will be taller than this room and about two-thirds as wide. It is a huge tunnel. And it is just for utility use and pipes and things like that.

I had wished we could have had some sort of underground access for the public with shuttle buses to this new visitors' center. But that has not been planned for yet.

Mr. Wolf. Well, has the Court, though, coordinated what you are doing?

Justice Kennedy. We have had meetings. There are many commissions. There are commissions for Washington, D.C. There is the Capitol Complex Committee, which includes the Architect of the Capitol and Sally Rider and Pam Talkin. They sit on some of these committees with members of Congress. And the police forces are represented.

I have not seen any master plan come out that I think is tremendously innovative or exciting. There is only so much we can do. There are these barriers--what do they call them?

Nasatka barriers that are being placed discretely around the Capitol.

It seems to me if you had enough of those within a three-block area, you could have, the Library of Congress, our building, your building, like an open campus. And I hope we can still have that look. The perimeter design we have for our building will try to keep that open look so that the heavy security for trucks and unauthorized vehicles can take place well away from the building.

We do have the problem in that 2nd Street is right behind our building and that is a neighborhood and we do not want to impair the character of that neighborhood. But we are going to put in barriers and have those manned.

Mr. Wolf. I will ask one other question, but are the barriers compatible with what is being done at the Capitol? There are different barriers at Treasury than there are at the Park Service at the Washington Monument. We are going to be Balkanized in this town.

Justice Kennedy. I checked with the Capitol Architect who is coordinating that. And it will look the same----

Mr. Wolf. It will look the same?

Justice Kennedy [continuing]. And be coordinated and you will not have to go through redundant systems that are not necessary for security.

We could have had, if perhaps we had have insisted on it, tunnel access. There is going to be a tunnel from the Visitors' Center to the Library of Congress, as I understand it. We might

have planned our tunnel to come to our building. We did not think we could handle that number of visitors. So we do not have tunnel access in the new plan. And we are content with that decision.

PROJECTED OBLIGATIONS FOR MODERNIZATION PROJECT

Mr. Wolf. Okay.

The last question--then Mr. Serrano. For the building renovation, through fiscal year 2003, the Committee has provided \$110 million. Can you update the Committee on the status of the building renovation project?

Justice Kennedy. It is now on time and on target. We actually have a ground-breaking in just a few months. The heavy construction will begin this summer. Completion is 2008. They think they can go ahead of that. They have not let the final bid for the main contract. But those bids are going out just over a month ago.

As you know, the whole project was delayed for about a year and a half or two years because of our concerns with the cost. We just could not believe the building that was built for just under \$8 million in 1935 would have almost triple that spent just on the plans for the refurbishing. But we are confident that all of this is necessary. The building, as you know, has not been upgraded since its construction and all of the basic systems have to be replaced.

The Architect of the Capitol assures us that they can work around the schedule of the court. The court will remain open. The justices will remain in their chambers and arguments will be heard in the court. And we actually investigated moving elsewhere and they said that would be more expensive and not necessarily time-saving, so we are going to do it this way.

Mr. Wolf. Okay. In the fiscal year 2004 Buildings and Grounds request, there is \$12 million for the final increment of funding for the building renovation. Since it is taking several years, if you could tell us, how much of the \$12 million do you anticipate obligating in fiscal year 2004?

We are going to work with you and help resolve it. The numbers are so tight that we cannot appropriate funds that will not be obligated in fiscal year 2004.

Justice Kennedy. The \$121 million--and we are talking about the extra \$10 million and \$112 million.

We may not obligate all of it. We want the authorization to do so in the event that we have some contingency.

But let me go back to the staff on that and we will see if there is some slack there because I understand precisely the problem.

Mr. Wolf. And that would help us in a different area. And if you knew that next year that would be helpful.

Justice Kennedy. We are confident the project has been authorized and you are not going to let it remain uncompleted

Mr. Wolf. No, we are not.

Justice Kennedy. Let me go back into the obligated portions of that actual total

Mr. Wolf. Okay. Thank you.

Mr. Serrano.

SUPREME COURT WORKLOAD

Mr. Serrano. Thank you, Mr. Chairman.

You know, as I have said in the past to both of you, I still find myself in a very uneasy situation at this one hearing every year. And anyone who knows me knows that I do not usually feel uneasy around anything. But----

[Laughter.]

The whole idea of having justices of the Supreme Court come before our Committee to talk dollars and cents has always struck me as somewhat bizarre. But it is a tradition and I accept that.

So on one hand, I am uneasy about talking about renovations with you when I really want to talk philosophy [Laughter.]

And on the other hand, I know I should not be talking philosophy because that is not what you do at a public hearing with the Supreme Court.

So, with that in mind, I try to be as gentle as I can and I will. And the reason for that is because although I, like other Americans, get upset at you every so often, we still hold you as something so special to us as the protectors of our Constitution and the ones who interpret what that, indeed, sacred document says.

So in my gentleness--the new, gentle Congressman Serrano--

--

[Laughter.]

Workload expectations--we spend a lot of time at these hearings--and I do--talking about detainments by the INS, the PATRIOT Act, so many issues that have to deal with civil liberties and immigration issues and everything that has happened since September 11. I suspect that eventually one or two things will happen: either our government, to the satisfaction of people like me, will kind of pull back on that behavior, or there will be a lot of court cases in this country regarding all of those issues.

With that in mind, do you see an increase in the workload for the Supreme Court over the next couple of years?

Justice Kennedy. We do. Nothing that is not manageable. If you look at page 1.12 of the budget estimates submission, you will see the graph that inexorably is going to reach 10,000 cases.

The real increase in the workload has been in the Courts of Appeals and, in less part, in Immigration. The first, the Second, the Third and the Ninth Circuits have not had a new judge since the early 1980s. And in the Ninth Circuit, the workload has doubled with the same number of judges.

A large part of this, now, is immigration. The Executive Branch has a program to try to be current with the current immigration issues and this has increased immigration appeals by some 200 percent in the 11th Circuit, which is my Circuit. And I think by 100 percent in the Ninth Circuit, which is already overloaded.

So those courts will be processing the caseload first. It will then come to us. Most of this is in petition form. And we have the experience and the tradition and the working method of finding from these cases those few cases which contain issues where we think our guidance can be helpful.

So I think we can keep up with the increased workload, particularly if we have the software that our staff needs just to accommodate these numbers.

Mr. Serrano. And do you have the software now in place? Or will you have when these budgets are done?

Justice Kennedy. Well, if the budget authority that we request is granted, we will be absolutely on top of this caseload.

And incidentally, as you know, it is our practice and our very rigid tradition that we are current with our docket every June 30; every case that is submitted to us for an argument will be disposed of by June 30, for better or worse.

Mr. Serrano. So while you see an increase, you still think you can handle it. And is the increase related to activities by all of us, both Congress and----

Justice Kennedy. Yes. Whenever Congress passes a new statute--the bankruptcy act, the new acts with reference to terrorism or security--it creates issues of interpretation that courts have to resolve. And, in a matter of time, over a period of a couple of years, those issues will come to the courts.

HIRING MINORITIES AS LAW CLERKS

Mr. Serrano. Okay.

Let me take you to another area that we have brought up in the past, the whole issue of the diversity on the staff of the court. Have we made some progress there? I know in the past we had the issue of clerks and the issue surrounded more on what schools were being invited to submit folks for these positions. Has it gotten better?

And although we are dealing with the Supreme Court, you are still very much involved in seeing what happens in other courts. Has it changed for you? And has it changed elsewhere?

Justice Kennedy. Yes. As we have discussed before, Congressman, a major concern we have with the applicant pools where minorities are under-represented, according to the population, and they are even under-represented based on the percentages in law school, because if you have a young person who is a member of a racial minority and he or she has done very well in law school, the temptations to go into private practice are very strong.

I will go to a law school and have breakfast with the kids and I will say, ``How many of you have a student loan of over \$70,000 that you are carrying?'' And about two-thirds of them will raise their hands. And that means that it is hard for us to recruit these clerks.

But we have done well. There was a newspaper article and I believe it is correct, just from my own assessment, that of our 35 law clerks, eight are minorities. So that is over one fourth--well, maybe Justice Thomas has some comment.

Justice Thomas. Well, I would like to underscore the point that we are talking about the financial consideration in clerking. I think clerks make about \$50,000 a year. I have had clerks with as much as \$160,000 in debt. And there is no way they can finance that indebtedness on that income when the salaries in the private sector are far more than double that.

So considering when you look at the pool of kids we are

looking at, they are enormously employable and in demand. And it is ironic, as I have discussed with them, that from time to time there is no debt forgiveness for the kids who go into government service. But there is debt forgiveness in other areas. But there is an enormous pressure for them to go to the law firms in order to finance their indebtedness.

And to the extent that the minorities that you are concerned about have this kind of indebtedness, I have known there have been kids in the past I have pursued who could not clerk, simply because of the finances.

So that may also be a consideration.

Mr. Serrano. I am sure it is.

I thank you for your answers.

Mr. Chairman, thanks.

LAW SCHOOL DEBT

Mr. Wolf. Thank you.

Before I recognize Mr. Rogers, let me ask why could you not have the same type of program that the Federal government has for debt forgiveness? I would be willing to work with the authorizers to give you that ability.

Justice Kennedy. And it is a revelation to me. I had not known of the program.

Mr. Wolf. Because I think it is a legitimate issue. Government service is very, very important. No young person will have a greater opportunity than to work in the government, whether it be in the Congress or in the Supreme Court. So I would support giving you the ability to have a program for debt forgiveness for student loans.

When a clerk comes, do they come for one or two years?

Justice Kennedy. One year.

Mr. Wolf. If you can look at it and see, perhaps we can do something here on a trial basis or we can work with the authorizers to give you the ability to have a debt forgiveness program similar to what they do in other Federal agencies. Would you be interested in doing that?

Justice Kennedy. Well, you are teaching me something. This is a revelation to me. So we will talk to your staff about it at once and see if there is a program that you can authorize that would help some of these young people.

Mr. Wolf. Okay.

Justice Thomas. Well, I think it is a good idea. I have, for years, thought that some of the hydraulic pressure against these kids going into the government service was financial.

Mr. Wolf. Yes.

Justice Thomas. I had one young clerk who made more as a law clerk than both her parents together. And she was carrying in excess of \$160,000 in debt. So there was just simply no way she could stay in government.

Mr. Wolf. Right. Well, let us look at that and see. I would certainly be open to this and I know Mr. Serrano, on his line of questioning, would.

Mr. Rogers.

Mr. Rogers. Thank you, Mr. Chairman.

Mr. Justices, welcome back to this tiny hearing room. I have had the pleasure of being in the room with you now every year for many years and others on the Court. And I am very pleased to hear of your progress in electronic means of opinion-writing, research and what have you.

And, you know, it is absolutely remarkable when you consider that your predecessors, when we first had a Supreme Court, were scratching out those opinions with quill and ink. And I assume all of you are writing your opinions these days on the computers. Is that correct?

Justice Kennedy. When I get in trouble, I use the old yellow pad, but it goes onto the computer next.

Justice Thomas. And I do not have a yellow pad. [Laughter.]

Mr. Rogers. How has the electronic age that you instituted there, at the Supreme Court, changed the way the business is done?

Justice Kennedy. Well, we think we can just be more confident that we are supervising or trying to give guidance to a system where we have confidence that we know what the issues are and how many cases are there out there that are on this same point.

And we have confidence that when we issue an opinion we have been able, through electronic research--and this is what our clerks do--to pick up the related strands, the loose ends that are out in the system and see if we can bring some coherence to it.

When you are doing legal research--and that is the biggest benefit, rather than the writing, is the legal research--it is like sitting down and talking to someone who has instant recall of every case that has ever been written. And I forget some of my own cases, especially the ones I wrote on the circuit, but I will push in two or three key words and it will come right back. And it is faster than I can go to take it off the shelf. So it is like talking to someone with this fantastic memory.

And it makes you aware when you are writing of the horizons that are available to you and also some of the dangers for certain words that you should use or not use. And I think it is made our opinions much better. And it is mostly through the legal research and not just the writing.

One of the things the writing has done is our secretaries are really not so much in the loop of the opinion-writing. I put something on the screen directly to my law clerk then he or she gives it right back to me and the secretary is freed up to do other things.

Mr. Rogers. Well, this Subcommittee has been very open to your requests over the last few years, at least, to modernization of your systems. As Justice Thomas noted, you have grown from 150 personal computers to 557----

Justice Kennedy. It is close to 600.

Mr. Rogers [continuing]. And from two servers to 40, increasing your storage capacity hugely. You have built a separate secure Internet network and bringing that total to two. You have developed a fully automated opinion writing system and new docket system. You have developed state-of-the-art finance and payroll systems. And you have upgraded the wiring in the building to a modern cable infrastructure, among

other things.

And, Mr. Chairman, I appreciate the fact that you have been very sensitive to those requests because that really, I think, has improved your efficiency enormously, as well as the quality of what you do, I would judge.

CASELOAD

But when you talk about the caseload that you are having to contend with, if I am not mistaken--and you covered this somewhat a moment ago--on page 1.8 of your justifications, I notice your total caseload in 2002 is 9,759 cases. And you have to go back only to 1975 when you were doing half that many.

Justice Kennedy. Yes.

Mr. Rogers. So in some 27 years, you have doubled the caseload.

Could you have done that without these new modern means, this electronic age?

Justice Kennedy. No, and for two reasons. One is our law clerks are trained to use these things. And so they more or less have to use them.

Secondly, it is the electronic capability that has allowed the law clerks to handle--and our own clerk's office, I might say, for processing--this extraordinary increase without any increase in the personal staff of the judges and with, I think, very modest increase in the staff of the clerk's office.

So it is all because of the electronic capability that we are able to absorb this workload.

Mr. Rogers. Just coincidentally I noticed, at page 1.13, the chart showing your type of cases that are docketed: 37.5 of the cases are criminal cases as opposed to 30.3 which is civil and the habeas corpus cases at 30.8. How have those numbers changed in the last few years and in the last several years?

Justice Kennedy. They have been relatively constant. And, as you will see on the next page, it shows you the cases that we actually hear arguments in--the civil portion being larger and more complex. The numbers have held about even over the years as to the percentage of the cases that we hear.

The increases that you see on the chart on pages 1.11 and 1.12 show you the huge number of prisoner petitions that have occurred for us and that changes the criminal percentage and increases it for docketed cases.

But insofar as the cases argued, I think it has held about the same.

CIVIL CASES

Mr. Rogers. And that brings me to another question: The Supreme Court, as the head of our judicial system, I know it is greatly concerned that--and that is the caseload out there in the--in the Federal system. In most Federal court districts there are so many pending cases and so many pending criminal cases, which, of course, must take precedence, that you cannot get a civil case heard. And this old axiom that we have lived by that justice denied--the latest justice denied, I am afraid, Mr. Justices, that justice is being denied in many civil cases in our district courts out there across the land. Am I wrong in

that?

Justice Kennedy. I think the picture is somewhat better than you indicate, save for this: We have now about a 15 percent vacancy factor in the appellate courts because of this difficult process in appointing and confirming judges. If I were to tell you that I am a factory manager and I have had 15 percent of my production closed down for three or four years, you would see the seriousness of this concern.

District judges have become very good case managers now. District judges spend a great deal of their time in streamlining litigation. They confine the number of issues. They put limits on the number of depositions. They have found out that if you put in work at the front end of the litigation process, you can shape that litigation and streamline it. There is a risk that if the case settles you will have spent your time in vain.

But I think our judges are good case managers.

Now, it is true that as Congress continues to pass more statutes making certain conduct a Federal offense that it increases the percentage of criminal cases in the district courts. And, as you have indicated, under the Speedy Trial Act, they must be given preference. The Speedy Trial Act has, in a way, become the delayed Civil Disposition Act. And so that is of an increasing concern.

Some of this can be taken care of by the discretion of the Federal government not to prosecute cases where there is concurrent jurisdiction; bank robbery can go to State or Federal. And the Justice Department, in this administration, I am confident, and in the last two administrations, have seen that as a cost saving for our overburdened district courts.

I think we can manage the existing caseload, if our judiciaries are brought up to full strength and if the request--and some of the districts' pending requests are granted--not all circuit courts or district courts need extra judges.

My circuit is the 11th circuit and they are committed to maintaining their size and to increasing their output.

One of the concerns we have at the circuit level is the number of cases that are by unpublished dispositions, by just short orders. We like a system where the courts have the time to give an extended written disposition. I think over 80 percent of our appellate cases now are done by unpublished dispositions, which are shorter. And I certainly do not want to see that increase. I want to see more published opinions.

Mr. Rogers. Mr. Justice Thomas, what is your opinion about the civil caseload out there at the district court level and the crowding of the docket such that it takes years to have a civil case heard? Do you disagree with your brethren?

[Laughter.]

Justice Thomas. Far be it from me to disagree with my colleague, although I occasionally do. [Laughter.]

I simply do not know. I have heard any number of district judges complain about civil cases being squeezed off their dockets because of the large number of criminal cases. And I have heard any number of civil litigators complaining that they cannot take cases to trial; they pressure them to alternative ways of resolving their disputes, whether it is through

arbitration or mediation, some alternative dispute resolution mechanism so that they can get it done more quickly than they would if they went to trial.

So I have heard the complaints on a number of sides, but in a large way it is up to Congress. The more things you criminalize, the more things the Federal courts have to hear. And it is going to cause that pressure and then you have the Speedy Trial Act, in addition to that, so the criminal cases are forced to the front of the docket.

But I tend to agree with Justice Kennedy, we really will not know until we have a full complement of judges just how bad it is. You are working with a significant number of Federal judgeships unfilled. So until that happens, I do not think we will know.

And I think ultimately the better source of commentary on that would probably be the AO and the members of the Judicial Conference, who have a much better feel for exactly what is happening in which districts.

I know, for example that in the middle district of Florida, you have to increase the number of judges because of the enormous number of drug cases they have in that area. I do not know whether that would be true, for example, in Utah or in Missouri. But I think the AO and the Judicial Conference would have a better handle on that. But generically I see what the problem is.

Justice Kennedy. I was going to say that there are some districts that are in serious trouble: the Southern District of California, which has the California/Mexican border; the Southern District of Florida; the Central District of Florida.

Interestingly enough, the Middle District of Georgia, which is where Highway 95 comes up and it is a drug pipeline, tell me their judges, who are highly qualified and marvelous professionals who are capable of trying a class action, an anti-trust case, a securities case, are trying drug cases all day long. And it affects the kind of people we can recruit to go on our Federal bench.

I have urged all of those districts to take increased advantage of the inter-circuit assignment mechanisms that we have to bring in visiting judges to help with that workload so that the judges that are resident in those districts can try civil cases and keep up their own skills and serve the Bar and the private sector.

JUDICIAL VACANCIES

Mr. Rogers. Well, my time is running out here, but how serious is the problem we had with large numbers of judgeships that are not filled or confirmed? How big a problem and your caseload is that to us?

Justice Kennedy. On ours, we are at full strength. But for the circuit courts and the district courts, about 15 percent of your production capacity is just shut down.

Mr. Rogers. And the problem here----

Justice Kennedy. We have about a 15 percent vacancy rate.

Mr. Rogers. In the district?

Justice Kennedy. Circuit court.

Mr. Rogers. Do you know what the district percent is?

Justice Kennedy. District is somewhat smaller. It is 4.3 percent. The courts of appeals have a 13.4 percent vacancy rate.

Mr. Rogers. Yes.

So as the caseload stacks up, does not that bring pressure on the system to fill those vacancies and, for gosh sakes, give us the judges that we are entitled to have?

Justice Kennedy. The Chief Justice has spoken about this for many years. And that is his position and that is, I think, the position of most of the judiciary. Yes, sir.

Mr. Rogers. Is the bottleneck the United States Senate?

Justice Kennedy. The bottleneck is in all of those who are involved in the appointing process. [Laughter.]

Mr. Rogers. Well, I tried.

Thank you.

Mr. Wolf. Mr. Cramer.

COURT AUTOMATION

Mr. Cramer. Thank you, Mr. Chairman.

And both justices, welcome back before the Subcommittee.

Mr. Rogers covered many of the issues I wanted to talk to you about and that was the automation program issues. And I see reflected in your budget a \$2.5 million increase to cover the increasing costs that you face.

I admire what you have done. And I am pointing to the summary of your testimony there.

How many people are involved in managing the automation program?

Justice Kennedy. Close to 30.

Mr. Cramer. Thirty?

Justice Kennedy. Close to 30; I think 27, 28.

Mr. Cramer. And, obviously, your budget supports that. Has that been an increasing number?

Justice Kennedy. Yes. And, as I have indicated, if we go to outside contractors, it is very expensive.

Mr. Cramer. You have not done that at all?

Justice Kennedy. Well, yes, we do that, in part for the design. That is where they are really beneficial. But sometimes for operational reasons we go outside. And then we have to be very careful because of our own security problems. We have to make sure that they are aware of the traditions and the climate of the Court.

And this is expensive and this is one of the things we want to avoid.

Mr. Cramer. How connected is your automated system, if at all, with the systems at the district and circuit levels?

Justice Kennedy. It is not.

Mr. Cramer. Not at all?

Justice Kennedy. Not connected.

Mr. Cramer. All right. And the security issues, with regard to your systems are secure or at least----

Justice Kennedy. They are as secure as we can make them. Our court has been very lucky in the fact that we have had no major breaches of security for pending civil cases, which affect hundreds of other cases where settlement decisions could be made based on predictions of what our Court will do. So we

have been very lucky in that. We have been very careful.

Justice Thomas. May I add to that?

Mr. Cramer. Of course.

Justice Thomas. We have been very reluctant to have a system that has any sort of gateway or access to the outside world, whether it is to the other court systems----

Mr. Cramer. Which is the reason----

Justice Thomas [continuing]. Reluctant----

Mr. Cramer [continuing]. That you are not at all connected to those, probably?

Justice Thomas. Precisely. Nor are we connected to the Internet through our internal system. We have an entirely physically separate network for the Internet

Mr. Cramer. How long has that been true?

Justice Thomas. That we have----

Mr. Cramer. Separate systems.

Justice Thomas. We have never been connected to the Internet. We slowly and somewhat reluctantly moved in that direction, with independent connectivity through phone lines. We have only recently gone to the faster lines and we have only recently gone to broader connectivity and access to the Internet throughout the building.

For example, in my chambers, until this past summer, we had one stand-alone computer that had just dial-up connectivity or DSL connectivity to the Internet. But our systems do not overlap or speak to each other.

Mr. Cramer. So you are making the progress that you need to make and your budget reflects that?

Justice Kennedy. Yes, sir.

Mr. Cramer. All right.

Justice Thomas. In a sense, yes and no. I have been disappointed that we have not been more aggressive. When I came to the court, we still had in the hallways the old word-processing equipment. We are always a little behind the curve.

Mr. Cramer. Because of your caution, or what?

Justice Thomas. Well, initially, and probably even now, because of our caution. We do not want problems with our system. And, as Justice Kennedy has indicated, we have never had breaches. And we do not want breaches and we do not want viruses like other--like you--as anyone who has computers would not want them.

But the other part is that simply we have not been as aggressive in our budget requests and in getting on top of the computer problems. It is only in recent years that we have done that. And I think we have been very candid about that. We are moving, but we need to move faster, hence the requests you see in our budget this year.

Mr. Cramer. Well, I would encourage you to be aggressive with us and to ask us for what you need because I think that is a very important part of what you need to be doing that makes your life easier anyway.

Justice Kennedy. We are satisfied that this budget and the supplemental budget give us what we need. We are also satisfied that it is urgent.

Mr. Cramer. Very good.

Justice Kennedy. And that it is absolutely necessary.

JUDICIAL VACANCIES

Mr. Cramer. Back to the vacancy rate that you made reference to on the district and circuit level, what would that vacancy rate have been, say, two years ago or four years ago?

Justice Kennedy. It would have been slightly less.

Justice Thomas. Slightly less.

Justice Kennedy. I think historically there is a 7, 8 percent vacancy factor.

Some of the problems about the whole recruiting process or the whole appointment process is in getting really qualified attorneys to fill the vacancies. That is becoming harder these days.

Mr. Cramer. Why do you think that is?

Justice Kennedy. In large part, salary.

Mr. Cramer. Salary?

Justice Thomas. Salary and the appointment and confirmation process. There is just nothing that----

Justice Kennedy. The dreadful process----

Justice Thomas. Yes.

Justice Kennedy [continuing]. Of exposing yourself to that.

Justice Thomas. I would like to make one further comment about that on workload. I was informed by judges who are more knowledgeable about these matters than I am that fewer judges are going senior status now. A judge on senior status does not count against the number of active judges that you have in a district or on a circuit but they still work. So you are getting the work of a retired judge, as well as an active judge.

It is my understanding that many are choosing now to simply retire because of the financial considerations. Well, that means that we have a vacant, active judge slot and a judge who would normally be doing some work now not doing any work at all.

DIALOGUE ON FREEDOM

Mr. Cramer. Justice Kennedy, are you still involved in the Dialogue on Freedom Program?

Justice Kennedy. Yes, sir.

This--as I explained this to the Committee last time--was in the wake of September 11. I thought our high school students were not really prepared to recognize that there are certain basic values that are inalterable. We have a tradition of freedom that we wish to preserve and defend. And so I had a program that I participated in and I asked the ABA to take it over and we spent about an hour and a half with high school seniors asking them to discuss basic American values, the ideas of freedom, those universal principles of which Mr. Jefferson spoke.

And at last count, I think the ABA told me we have over 120,000 students nationwide in this program. And they want to continue it again next year.

Mr. Cramer. Terrific. Congratulations.

Justice Kennedy. Thank you.

Mr. Cramer. Thank you, Mr. Chairman.

Mr. Wolf. Mr. Vitter?

ELECTRONIC FILING

Mr. Vitter. Thank you, Mr. Chairman.

And thank you, Justices, for being here, as always.

I wanted to touch on a few questions about technology. I know you have been making significant changes and strides. As I understand it, most, if not all of it, is, within the Court and within the courthouse. The rest is interaction with attorneys before the Court or the outside world.

What thinking or plans, if any, do you have about allowing briefs being submitted electronically?

Justice Kennedy. Justice Thomas is more knowledgeable on this than I.

We have that capacity now in an emergency case. Part of the calculus, I think, has to be that the expenditure is borne by the Bar and by the parties, rather than shifted to us. And hard copies are ultimately what we need and they have to be reproduced at some point.

Now, insofar as filing notices, we have--pro se petitions; a lot of that we do handle electronically. If the petition is inadequate, we just send it back electronically and they can fix the filing date.

So we save a tremendous amount of turnaround time and document preparation on the initial filing of petitions.

Insofar as the briefs, the capacity is there to do it. And we can do it and do it for emergency cases, but I think we have it at about the right balance now.

Mr. Vitter. If the capacity is there, why wouldn't it be beneficial to the Court in terms of costs and efficiencies to encourage more filing electronically of the actual briefs?

Justice Kennedy. Ultimately, they have to be printed anyway so that we can read them.

Mr. Vitter. Well, I guess I do not understand that--why? I mean, you can, obviously, read it on a screen.

Justice Kennedy. Well, I suppose you could condemn me to a life in front of the screen. [Laughter.]

But we have a tremendous reading schedule. Most of us do that work at home. We often mark things for our clerks to use. We often work with hard copies--and our briefs are actually printed. They are in a very good format. And most of us are used to working with hard copies

Now, insofar as being able to access the briefs for historical purposes and for reference purposes, do we have those electronically, as well? The briefs are not available electronically----

Mr. Wolf. In the narrative cases we receive them----

Justice Kennedy. In the narrative cases we do.

For in-house use, we do have electronic briefs. But for the justices, we have to have a printed version.

Mr. Vitter. If it is made available electronically--every brief, so that means it has to be put into the system in some way--scanned? How does that work?

Justice Thomas. They are submitted electronically. We are not scanning them. So that, as we did in Bush versus Gore, it is my understanding that you have the hard copy filed.

Mr. Vitter. Right.

Justice Thomas. And they submit an electronic copy of the same brief and then we scan it for viruses and put it in our system. Clerk Suter has said that some attorneys cannot send them electronically, so we scan them and then put them in our system. And that is for internal use.

Mr. Vitter. Is that every case?

Justice Thomas. That is every merits case. But I think the concern is about reading--those briefs are 50 pages.

Mr. Vitter. Right.

Justice Thomas. And I think reading 50-page documents on the computer is not something I would like to do. In fact, even with the longer documents--and I use the computer quite a bit to do my work, and even when I have a 15- or 20-page document, my preference is to print it and then work with that. So you are really duplicating it, so you may as well have the brief. I mean, you are simply not going to read a 200-page appendix on the screen.

Mr. Vitter. Right. So am I understanding it right that every case on which you grant certiorari is basically in the courts both written and electronic?

Justice Thomas. That is right. And the advantage to that is that you can use your search engines to research things in that, as well as in the record. And we do that. I tend to work on my laptop. And I work quite a bit at home, so it is very easy to do it that way.

So if I say to one of my law clerks that I forgot the blue brief in this case, and let's say I am out of town, they can send it to me on my laptop and then I pull it up and I have printers. I can either print it out or I can read what I am interested in on the screen. So it makes the job portable, but I still think it does not displace entirely the need for the hard copy.

Mr. Vitter. For those cases, I am wondering if it is-- basically for those cases you have a burden one way or the other, either it is submitted in writing and you have the burden of scanning it or to the extent you allow it to be submitted electronically, you would then have the burden of printing it out. And is one burden much greater than the other, such that you might want to encourage electronic filing if it was in that direction?

Justice Kennedy. We like the burden on the private Bar. It would be a tremendous burden to scan it, yes.

Mr. Vitter. Okay.

Justice Thomas. The problem would be that eventually if everything is electronically filed, eventually we would need hard copies.

Mr. Vitter. Right.

Justice Thomas. So then the clerk's office would have to reduce those to print. And so we have not saved anything. So it is best to simply continue to have the filing and then to, perhaps, duplicate that with the electronic copy.

Now, what we do with opinions--that is similar to what we do with opinions within the court; intramurally. We print the copy of a circulating opinion, we circulate it and then you circulate an electronic copy simultaneously.

Mr. Vitter. All right.

Justice Thomas. It is the electronic copy, then, that I can

pull up at home and work with. So I do not need to talk to my clerks and I do not have these things stacked up on my desk.

But the point is that they sound duplicative or redundant, but I think both are important.

Justice Kennedy. There is a quality concern, too. Major cities all have legal printers. And when attorneys go to these printers and say, ``Here is my brief and this goes to the Supreme Court or the Court of Appeals or the State Supreme Court,'' those printers know what the requirements are. They are very good on proof writing and knowing how the footnotes should go.

So the printers work with the attorneys to make sure that the brief conforms, in all respects, to our requirements. And that dispersal of functions, I think, makes for excellence in the various legal communities and we rely on it.

Mr. Vitter. For the typical merit case, does the typical sophisticated litigant--you know, big firm, significant entity--submit electronically also, or no?

Justice Thomas. Yes.

AUDIO TAPES OF ORAL ARGUMENTS

Mr. Vitter. Okay.

Another aspect of technology in the recent University of Michigan case you released audio tapes same day for the second time in history, the first being Bush versus Gore. Where do you see that going? Do you see that becoming more common? And what sort of criteria do you see being used to decide what cases in which to do that?

Justice Kennedy. We are concerned, of course, with teaching that ultimately we will be judged by what is in our opinions. There is tremendous interest in the case, such as the one you have noted. But we think that the focus of the system ought to be on what we write and what the judgment is. And we do not wish to distract from that by giving the hearings an importance and a significance that they do not, in fact, have.

There are no guidelines, other than a case of great public importance where nearly all the people that want to get in the courtroom can get in to hear it; that is the only guideline we have.

In Bush versus Gore we did it because the whole legal system was learning about the case as we did, and we did not have a chance for the legal academics and for the different interests in the Bar and the community to write about the case, to comment about it. It was unfolding. And that was the justification for it there.

The Chief Justice made the decision to release the audio tapes of the Michigan cases, and we did not necessarily disagree.

I do not think it is going to be a common practice.

Mr. Vitter. Okay.

I thank you very much.

Mr. Wolf. I thank you, Mr. Vitter.

On that issue--and I think you probably just answered it--does the chief justice make the decision? Or do you all confer as to whether or not--you have only had those two cases--they are released?

Justice Thomas. Yes.

Mr. Wolf. Can he unilaterally do that? Or am I asking an inappropriate question? I mean, you should see all the inappropriate questions I have. [Laughter.]

Justice Kennedy. The Chief Justice is very good about consulting us about our wishes on these things and following the view of the majority of the court.

Mr. Wolf. Okay.

What can you say? [Laughter.]

OUTSIDE TECHNOLOGY EXPERT

Has the court hired or have you considered hiring a technology expert to assist in the implementation of the programs; someone who does that solely? Or have you had an outside--I do not mean a contractor, but an outside group like the FBI uses an outside group for their systems.

Now yours would not be nearly as complicated as the FBI, I am sure, or do you have an inside person whose sole responsibility is to work on the technology?

Justice Kennedy. We have people that are on the inside that are very skilled at designing systems. But for the major design, we have them work with outside contractors.

Mr. Wolf. What I think the difference is, though, an outside contractor versus an outside panel, like Mitre Corporation--and I make that up--somebody who has no vested interest of selling you a particular package, they just will come in and be the honest broker. Have you had anybody look at that?

Justice Thomas. Well, I think, we are like the FBI; the FBI has a large, perhaps centrally located----

Mr. Wolf. True.

Justice Thomas. Our central system is not a problem. We are upgrading that as we go along. But you are talking about a number of discrete systems. For example, you are talking about our case management system, our budget and our personnel systems, our library systems. They are discrete systems. And we have had consultants. We did not have the big problem that the FBI had. And we do not have a large complicated system, as they have. I think we are doing very well as we are doing it with consultants and with people who understand the courts.

I continue to think that it is a problem, if we go too much on the outside, of compromising our internal materials. And we have not had that problem so far. And I think the mix that we have now is just about right and we are actually heading in the opposite direction, trying to bring more of it in-house so that we do not have the security problems down the road.

CASES GRANTED REVIEW

Mr. Wolf. We were talking about cases granted review. The number of cases granted review per term since the mid-1990s has remained between 80 and 100. However, in the 1970s and 1980s, the Court was reviewing between 120 and 200 cases.

Can you describe the process the Court uses in deciding what cases to review? And is increasing the number of cases reviewed an objective of the Court? And what impact will the automation have? On page 1.9 you can see the cases granted

review during the term have dropped, in 1970 it was 161; 2002 it was 85.

Justice Kennedy. When I came to the court, we were hearing 160 cases or 150 cases a year and it was far too much because all nine of us must hear and participate in the decision of every case. And 160 was just unmanageable.

Mr. Wolf. And what year was that?

Justice Kennedy. Well, I came in 1988.

Mr. Wolf. And it looks like you have made an impact, then, because they have dropped quite dramatically. [Laughter.]

Justice Kennedy. I guess nobody wants to bring their cases to me. [Laughter.]

But that was far too much. Eighty, 85, 90, frankly, is too low. We are not at full capacity, so far as the justices are concerned as to the number of decisions. But we are not particularly conscious of having any particular numerical goal. We take those cases where we think our guidance is necessary and helpful for the rest of the system.

We are, frankly, sometimes puzzled that we do not have more cases on a particular calendar, but we are not willing, just to fill up our docket, to take cases where there has not been a division of opinion in the circuit courts or the state supreme courts or where it does not present an issue of great importance.

We see any number of cases we think are wrong; and we do not take them because that is not our function. Our function is to give guidance when basic legal principles are causing disagreements among the court.

When Congress passes new statutes, as I indicated earlier, that will automatically increase the number of cases. And in light of some of the statutes recently passed with reference to terrorism, I expect that this number will rise somewhat.

Mr. Wolf. Okay. And will the automation enhancements requested allow the Court to do that, increase the numbers?

Justice Kennedy. Absolutely. And, of course, this is just the number of cases that we have heard. As you know from the other graph, the number of petitions and cases that are filed with us is greatly on the increase. For that aspect, we really need the information technology.

WORKPLACE PROGRAMS

Mr. Wolf. What telework opportunities does the Court offer to its employees?

Justice Kennedy. I know that you are interested in this, Mr. Chairman, and I am, too, because we have the same basic commute.

Mr. Wolf. Well, it is quality of life issue and also the studies show that people who are telecommuting or working at home, if you will, one day a week are actually more productive than those who are coming downtown every day. So there is nothing magic about a location.

Justice Kennedy. And a number of the justices are this way. Justice Thomas and I both do a considerable amount of work at home.

Our clerk's office--our Clerk Suter is here--took your request seriously and met with his people and concluded that

they do not see substantial room for telecommuting in the clerk's office itself, in part because it is the central repository for documents and they have to review those documents before they go to our various chambers.

But I think that what you say here is very important. And I am going to ask the clerk to go back and study and see if we cannot give you some more positive results for the next time.

Mr. Wolf. Do you have flex time?

Justice Kennedy. No.

Mr. Wolf. That was my legislation, actually. Flex time, you may want to come in at 6 and leave at 3 or you may want to come in at 9 and leave at 6. With the stress that the American family is under today, anything that any employer can do to give people greater flexibility to spend more time with their families and yet not detract from their jobs are positive things.

For instance, does the Court have job sharing? Can two people share a job for a period of time? One may have just had a child and perhaps another one wants to stay home and take care of a father who may very well be dying of cancer. Does the Court have job sharing?

Justice Kennedy. Yes, we do. Now, in our chambers, I might say that I have one of my assistants come in at six in the morning. And so we have that capacity----

Mr. Wolf. Good.

Justice Kennedy [continuing]. In our own chambers. And then the clerk's office, of course, they are open for regular business hours, but they have people that come in early to prepare.

Mr. Wolf. So they have the flexibility for that?

Justice Kennedy. They certainly have it.

Mr. Wolf. Do you have leave sharing at the Court so that if one is ill you can all donate?

Justice Kennedy. Absolutely, yes, we have that.

Mr. Wolf. And does the court take care of on-site child care with the Capitol?

Justice Kennedy. We have it close by in the AO building. It is not on-site.

Mr. Wolf. Okay. They are basically the questions that I have

Mr. Serrano, do you have any other questions?

MODERNIZATION PROJECT

Mr. Serrano. I do, Mr. Chairman.

I know you spoke about it, but we sat here a couple of years ago and spoke about horrible physical conditions at the court itself. That has gotten better, I hope, through some of the renovations.

Justice Kennedy. Well, the renovation has not really begun yet.

Mr. Serrano. So there is a horrible physical condition?

Justice Kennedy. No, sir. [Laughter.]

Justice Thomas. It is not all that bad, but----

[Laughter.]

It is----

Justice Kennedy. It is horrible from the engineer

standpoint, yes.

Mr. Serrano. I have you on worldwide TV here giving you a break here

Justice Thomas. I hope not. [Laughter.]

No, you know, coming from EEOC where we lived in a sick building, we are doing pretty well. But it is a problem. The beauty of the building belies the significant problems internally. And that is all we will say.

Mr. Serrano. Well, we stay committed, Mr. Chairman, to making sure that that gets taken care of. Have to keep these folks happy. [Laughter.]

But, for my part, thank you so much for coming.

Justice Kennedy. Thank you.

Justice Thomas. Thank you.

Mr. Serrano. Thank you.

Mr. Wolf. Well, we thank both of you. And if you can look at a couple of those issues on the 12 million for the building renovation, if you could put it off. Secondly, if somebody from the Court can come up and meet with our staff on the problem or opportunity of perhaps a loan or payment with regard to law clerks.

MANDATORY MINIMUM SENTENCES

I have been very, very careful in getting into other issues, but I think the Court plays a tremendous role with what is taking place in society. I saw the story the other day: We now have 2 million people in prison--2 million people in prison.

Justice Kennedy. Too many: 8 percent of those are in the Federal system.

Mr. Wolf. You know, I just see things----

Justice Kennedy. Mr. Chairman, in many cases our sentences are too long.

Mr. Wolf. Well, you know, I am a conservative Republican and I think there is no question if anyone looks at my voting record----

Mr. Serrano. I was wondering if that was redundant.
[Laughter.]

Mr. Wolf. No. [Laughter.]

Mr. Serrano. No, I just----

Mr. Wolf. No, definitely, I send my entire voting record out to every household in my district, how I vote on every single issue, so people can know.

I am also the son of a policeman. I think somebody has to really deal with this issue of the sentencing guidelines, particularly in some of the drug cases.

You do not have to answer, because we are not trying to pin you down on these issues that are not really the subject of the hearing, but I went to some Federal prisons in Pennsylvania and I interviewed a lot of the young people. I think at a certain point there has to be some other way of dealing with this.

There is another issue we bill on, which we hope to pass in the next several weeks, if not month or two, on the issue of prison rape. Thirteen percent of young men in prison are raped. In a study in Nebraska it was 21 or 22 percent. I think the Court ought to speak out. Somebody ought to speak out on the

issue. Certainly I think the Congress ought to be addressing the issue.

But you cannot continue to have this many people in prison and some of them are not violent. There must be other programs and other alternatives to prison.

Justice Kennedy. Well, Congressman, the legal profession has always been focused on the guilt determination phase. When the guilt determination phase and the sentencing is over, the legal system loses all interest in the prisoner. And this must change.

Winston Churchill said, ``A society is measured by how it treats the least deserving of its people.'' And 2 million people in prison in this country is just unacceptable; many of them are for long, long terms.

We have talked to Federal marshals and, you know, have a young man and he should not be doing this, but he is raising marijuana in the woods. That makes him a distributor. He has got his dad's hunting rifle in the car; he forgot about it and wanted to do target practice. That makes him armed. He is looking at 15 years. An 18-year-old does not know how long 15 years is.

And it is not so much the sentencing guidelines, it is the mandatory minimums. That is the problem. The sentencing guidelines are somewhat helpful, but the mandatory minimums are harsh and in, I think, many cases are unjust. And it is the responsibility of the legal profession and the judiciary, as well as the members of the Congress to begin addressing this problem.

Mr. Wolf. Well, I agree.

Well, with that, we thank you both for your testimony.

Justice Kennedy. Thank you.

Mr. Wolf. The hearing is adjourned.

Wednesday, April 9, 2003.

FEDERAL TRADE COMMISSION

WITNESS

TIMOTHY J. MURIS, CHAIRMAN, FEDERAL TRADE COMMISSION

Mr. Wolf [presiding]. Hearing will begin.

I want to welcome you. I have a brief opening statement and then you can proceed, and your full statement will appear in the record. You could either read the whole statement, summarize or whatever you see appropriate.

I want to thank Chairman Muris for coming before the Subcommittee this morning to discuss the Federal Trade Commission's fiscal year 2004 budget request.

The mission of the FTC is to enforce a variety of Federal antitrust and consumer protection laws. The FTC seeks to ensure that the nation's markets function competitively and are vigorous, efficient and free of undue restrictions.

The FTC also works to protect businesses and consumers from unfair and deceptive practices.

First, I want to congratulate you and your staff on the creation of the national Do-Not-Call list. By the end of the summer, the FTC will have a national database of telephone numbers of consumers who choose not to receive telephone

solicitations from telemarketers.

This initiative, I believe, will protect millions of American consumers from unwanted and obtrusive telemarketing calls. The committee recognizes and appreciates your work and that of your staff to make this important program a reality.

Another issue of particular concern to me is the marketing of violent video games to children and the impact that these games may have on a child's sense of right and wrong. Later in the hearing, I will show you a video on this topic and ask you to comment on what actions the FTC is taking to help parents protect their children.

With that--Mr. Serrano will be joining us later--I would just open it up for your testimony. Again, as I said, your full statement will appear in the record.

Mr. Muris. Well, thank you very much, Mr. Chairman. Let me just give a brief opening statement.

I certainly appreciate the opportunity to be here today to support the FTC's fiscal year 2004 appropriations request. And let me start by expressing my sincere thanks to you, Mr. Chairman, and to the entire Subcommittee for your continued strong support of the FTC's mission.

I also want to commend the work of your staff, for their help throughout the appropriations process.

As the Subcommittee is aware, we are the only Federal agency with both consumer protection and competition jurisdiction in broad sectors of the economy. With credit to the agency's staff, the FTC continues to handle an increasing work load despite only modest resource increases.

To continue our work the next fiscal year, we request \$191.132 million and 1,074 FTE. Our request represents an increase of \$14.524 million over the fiscal year 2003 appropriation.

In our consumer protection mission, which is our largest mission in terms of funds and FTE, the funds will be directed to fighting fraud and deception, protecting consumer privacy, and initiatives directed at specific consumer groups, including children, Spanish-speaking consumers and military personnel.

In our competition mission, the focus will be on merger and non-merger enforcement, particularly in health care, energy, high tech and international marketing.

Let me turn very briefly to describe the two missions. Our consumer fraud program will continue to be the mainstay of our consumer protection mission and will continue to target the most pervasive types of fraud and deception, drawing substantially on data from Consumer Sentinel, the FTC's award-winning consumer complaint database.

These efforts have been productive and directly benefit consumers. Since April 1 of last year, the Commission has organized eight joint law enforcement efforts, called sweeps, with more than a hundred law enforcement partners, resulting in 260 federal and state enforcement actions.

In the last year, the FTC has filed 120 cases involving fraud or deception and has obtained judgments ordering more than \$650 million in consumer redress. That amount does not include a settlement that is awaiting court approval with a sub-prime lender that would require the defendants to return \$215 million to consumers.

Consumer privacy continues to be a priority. You mentioned our creation of a national Do-Not-Call registry. I particularly want to thank you, Mr. Chairman, and the Subcommittee for your crucial role in moving this important initiative forward. It simply would not have happened without your support, and I am very appreciative.

We are going to begin implementation of the registry this summer and consumers who sign up will begin to receive fewer intrusive and disruptive phone calls.

We greatly appreciate, Mr. Chairman, your leadership on consumer-protection activities for children. I am pleased to announce that this fall we will hold a public workshop on the marketing of violent entertainment products. We will then prepare a follow-up report to Congress on the findings of the workshop and on the continued marketing of these products and the results of a new mystery shopper survey of retailers.

In addition, as requested by the Appropriations Committee, we have begun to collect information concerning the impact on underage consumers of ads for new alcoholic beverages, sometimes called ``alcopops,'' and on the alcohol beverage industry's response to the Commission's 1999 report to Congress and the recommendations made therein.

On the antitrust front, we have been equally as active protecting consumers in areas involving both mergers and non-merger conduct. During the unprecedented merger wave of a few years back, the FTC was forced to divert resources away from other activities to meet its statutory responsibilities for merger review.

With the decline in the merger wave, we have been able to restore the historical balance of our antitrust resources to both merger and non-merger areas.

For example, in 2000, during the peak of the merger activity, the agency opened only 25 non-merger investigations. In the last two years since I have been Chairman, with the decline in mergers, we have been able to open more than double that number.

As our written testimony reveals, the investigations that we target involve enormous harm to consumers. We are saving consumers many times the amount of the appropriation that we receive from Congress.

Health care is the most prominent area in our competition mission, and pharmaceuticals is the most prominent area of health care. One notable example is our recent settlement with Bristol-Myers Squibb to resolve charges that the company obstructed the entry of low-price generic competition for three of Bristol's widely used drug products.

Our complaint alleged a pattern of inequitable conduct at the Patent and Trademark Office, wrongful listings with the Food and Drug Administration, sham litigation and payments for generics not to enter, all undertaken to prevent generic competition.

The proposed consent order, which is now out for public comment, contains strong, and in some cases unprecedented, relief. It will directly benefit consumers who were forced to overpay by hundreds of millions of dollars for these needed drugs.

Finally, despite the decline in mergers, we continue to

have an active merger program. We are also, with the increase a few years ago in the filing thresholds, reviewing many more mergers now that are not reportable, but that can--particularly mergers to monopoly and mergers involving small markets--cause serious consumer harm. We continue to be vigilant in that area.

Just to conclude, I think we have had a vital role in protecting consumers and we ask that you approve our request. Again, we are enormously grateful for your help and support, particularly in the Do-Not-Call registry. And I would be happy to respond to any questions

[The information follows:]

[GRAPHIC(S) NOT AVAILABLE IN TIFF FORMAT]

Mr. Wolf. Thank you very much. Before I begin with questions, let me recognize my colleague, Mr. Serrano.

Mr. Serrano. I Just want to welcome you here, sir. As I told you before, in my other life in New York I chaired the Consumer Affairs Committee of the New York State Assembly. So this hearing is of great, great interest to me, especially. It seems to me that when the economy is doing well, people do not sufficiently protect consumers. When the economy does badly, we realize that people are being done in by a lot of folks that should not be doing certain things.

So I look forward to continuing to seek out your leadership, to make sure that all the things you have established continue to grow and to foster the kind of protection that we need

When my time comes, I will have a few questions for you.

Mr. Wolf. Thank you very much, Mr. Serrano.

Let me just begin with a budget question, then I want to discuss video game violence. But I would like to begin the discussion today in terms of budget requests.

FTC BUDGET REQUEST

The FTC's fiscal year 2004 budget request is \$191 million, an 8.2 percent increase over the enacted 2003 level. This request is funded through \$159 million pre-merger filing fees, \$18 million Do-Not-Call fees, and \$14 million in direct appropriations.

However, CBO's reestimate of the President's requests anticipates \$47 million less in pre-merger filing fee collection due to declining trends. Therefore, to provide the requested program level, we would have to provide \$61 million in direct appropriations rather than the \$14 million proposed by the Administration.

Given the size of the projected budget deficit, and the Subcommittees allocation, we are going to have a difficult time fully funding the request. But we will do our best. Do you have any comments?

Mr. Muris. Well, a couple of comments. In a prior life, I was a budgeteer. I worked at OMB. I know in the past--obviously this is not an issue for me or maybe even for the subcommittee--but in the past, the appropriators have adopted OMB technical assumptions.

I know they have adopted some of those assumptions for tax purposes so that is obviously one example. I think the OMB estimate is a reasonable estimate. But, foreseeing what merger activity will be in the future is an extraordinarily difficult thing to project

I would add that mergers have never been more than a third of the Commission's activity, and that was under the extraordinary merger wave. We return now to something like a quarter of the merger activity and I think----

Mr. Wolf. Is that normal now?

Mr. Muris. It is about normal now. I think that when the Congress started the Hart-Scott fees they never thought that there would be so many mergers that it could pay for the entire budget, not just the quarter of the agency that was mergers

Now, because of the decline to a more normal activity, there is a shortfall requiring a direct appropriation. I think it is a small direct appropriation given the very large returns that we provide.

I would hope that you could meet our request, but I obviously understand the difficulty and the many competing needs. I do think the American people get a very outstanding return from our work.

MEDIA VIOLENCE

Mr. Wolf. Well, I would agree. I saw that article in the Wall Street Journal the other day about you. I do not know how you perceived the article. I guess it depends on your viewpoint. But overall, I thought it was pretty good. And I think you and your people have done a good job

On the issue of video-game violence, we are going to show a--Hi, Mr. Baca, I am glad you came. We are joined by Congressman Baca.

And I did not know you were coming this quick. I am glad you are here. Why don't you sit up here or you might want to sit on your side so Mr. Serrano does not think you are defecting from----

[Laughter.]

Mr. Serrano. It is okay if he sits to my right, everybody is to my right. [Laughter.]

Besides, you will get the feel of him----

[Laughter.]

I can deliver a seat for you on this committee.

Mr. Wolf. Well, I appreciate you coming. It is timely that you are here.

I want to show a videotape on the issue of violence in video games and the impact these games have on children. At the conclusion of the video, I will ask you several questions, on what the FTC is doing to assist parents and ensure that violent video games are not marketed to children

Since 2000, the FTC has issued a series of reports entitled, ``Marketing Violent Entertainment to Children: A review of the self-regulation and industry practices in the motion picture, music, recording and electronic game industries.'

Your latest report from June 2002 found that advertising for mature video games was still being placed in television and

print media with substantial youth audiences.

Your December 2001 study also found that 78 percent of unaccompanied minors from the age of 13 to 16 were able to purchase video games rated ``Mature''. In addition, in December, the National Institute on Media and Family--I read the report last night--gave the overall video game industry an ``F'' on its media-wise video game report card

As you know, industry analysts are predicting the video-game industry will grow to \$20 billion a year industry. We must take action to help educate parents.

And in their survey, it states that there is very little parent knowledge and one of the recommendations is, ``Parents need to become more knowledgeable of content and exert greater supervision over the games their children are playing.''

There are a number of recommendations. But this is really troubling. And we just went through, in this region, and I believe you live in our region if my memory serves me, the sniper attacks. And it terrorized this region. The tape is three minutes long. It is shortened from a 10-minute video produced by the Lion and the Lamb Project, which is a parent-driven initiative to help provide information.

We took the most violent part out of this video. There was heavy sexual content that we took out that I did not feel that it was appropriate to show in this setting. So what you are going to see is kind of watered down. Sniper shots to the head, brutal beatings, bludgeoning of women with golf clubs, point-blank shootings of police officers. You are going to get a taste of what many teenagers are seeing every day after school.

And this is unacceptable. This is just unacceptable. Two million people serve in our prisons now. The level of violence that is coming into society is incredible. And the figures that I saw that something like 92 percent of young people are watching these things.

And I want to commend Mr. Baca. You have been out in front of this issue. I mean, I did not see it and I--somebody came in to show me one of these games. And my children are grown now and, you know, I thought we were talking about ``Pacman'' and--but this is violence.

So what I want to do is to show you this video, that is watered down, watered down big time, and then see if you have any comments. So we can show this.

[Video.]

When I drove in today, I came in Route 50 and went by the Home Depot where the FBI employee was shot, and this came to mind. The thought of this being sold in stores after what this region went through, and I saw where there was a Wall Street Journal piece, Mr. Baca, where the lobbyist from the industry said they did not really care what your bill did because they had enough lobbyist up on Capitol Hill.

What is the FTC going to do to educate parents? Your web site displays information defining the video-game ratings, but have you issued a consumer alert or taken other steps? What more can you do?

I do not know if you read the report by the media, National Institute of Media and the Family. Did you read that report?

Mr. Muris. Yes, sir.

Mr. Wolf. Ninety two percent of youngsters aged two to 17

now play video or computer games. And then, it goes on talking about some of the games and their impact. I really think this will have an impact on our society. I would hope the industry would come forward and say, ``We are going to cooperate. We are going to work. We are going to make sure these games don't hurt children.''

And I saw one game that one of the moms brought in; I could not find the rating. It was sort of blurry. And so there has to be some rating system, some uniformity, some education. Otherwise we ought not be surprised when we see what we are seeing in culture and we got 2 million in prison and the violence we are seeing. So I would like to ask you what can you do?

Mr. Muris. This is a very serious problem, and let me say several things, Mr. Chairman. One, I appreciate your leadership here.

Obviously, the sniper concerned us all. The gas station you mentioned is a gas station I occasionally have frequented in my life. I remember my then-Chief of Staff had been about to go to that Home Depot that Sunday night.

Culture matters, I agree. As a parent, I am deeply concerned, and I have seen the parts that you excised--much more graphic and much more appalling.

There are some things we can do, and we have been a leader in this area. One thing, occasionally, the people cross over the line in the way they market these products and market them fraudulently, both in terms of violence and pornography.

We had a case recently, for example, where someone was sending out spam, and they said, ``Win a free Sony Playstation.'' And in five clicks of your mouse, you were on a pornographic web site with your phone number being billed. We managed to shut that down.

We have been a leader in exposing how many of these products, despite the fact that they were rated as not appropriate for underage audiences, were in fact marketed to underage audiences.

We have issued several reports, as you have mentioned. This year, we thought we would do something different, something to try to give a further emphasis on the importance of the issue--that is to hold a workshop, to invite people like those who produced your tape, The Lion and Lamb Project, to come in and talk about the problems, and invite the industry, the various industries, which are involved in marketing violence. Besides the video games, there are the movies.

We will invite them to come in, and also invite the retailers in as well, to talk about their practices. We also are going to do another one of these surprise surveys to see if there has been any improvement among the retailers in how they police the ratings system.

I hope that we can provide further exposure to this issue and encourage further progress to allow parents to have more control over what their children purchase.

Again, I want to thank you for bringing this issue to our attention.

We will continue to be vigilant and, indeed, we are taking this extra step to try to provide additional emphasis.

Mr. Wolf. Thank you.

And if there are lobbyists here in Washington, they know about the sniper case. And they know what every mom and dad went through, and every family went through, and professional responsibility requires certain activities, and if certain activities are not taken then my sense is the nation should rise up and bring major lawsuits to begin to change this.

Because from a cultural point of view we cannot have regions go through what we went through and have this around the country. You just can not do it.

Between 9/11 and the sniper in this region it has had a major, impact. And had the sniper case not have taken place perhaps this would not have been called to my attention and I would not have gotten interested.

But I thank you and I ask those in the industry to be responsible and come forward and try to work with us to help solve this problem. Mr. Serrano then Mr. Sweeney then Mr. Baca

Mr. Serrano.

Mr. Serrano. Thank you, Mr. Chairman. I take very seriously your comments on this issue, as I told you before. And I do not disagree with you that we need to look at this whole issue of video games and how they affect our society.

But as I have said to you before, if we are going to be honest with ourselves and take a look at this, then I think we have to take a look at violence in the society.

I mean, for the last three weeks the major networks have shown us their version of a video game, which is called, ``Bomb Baghdad Every Night.'' Now, children are watching that violence and they are being told that that violence is red, white and blue, and very patriotic, but that this other violence isimproper for them.

I would suggest that maybe both violences are improper, and I do not have a video but certainly CNN's war coverage to me seems to me just as violent as anything I saw on that video.

And I think if we look at that we have to start looking at other things in society just to be fair to ourselves and to be fair to everyone else.

Another example is if two individuals in Mr. Sweeney's neighborhood or my neighborhood or your neighborhood, or yours, for that matter, start punching each other while playing a game of local neighborhood street corner hockey or baseball, they are going to probably be arrested.

Yet in professional hockey you could beat each other to a pulp while the crowd watches and that is considered part of the game. At what point do we look at that? Or when the benches empty in a baseball game.

So my whole point is that this is serious and I do not want to take that seriousness away, and I want to be part of dealing with this. But I think we have to be fair to ourselves and perhaps look at violence in the society, and that in the last couple of weeks we have seen a lot of violence on TV and that is considered good violence.

And I would like to ask a couple of psychologists and people who are much brighter than I on this subject what effect video games have, or what effect the war coverage has on a young child who is told that that is okay and that this is done for our country and for ourselves.

So we need to do that. Now, having said that, I would like

to bring you to a very boring subject, obviously, but very important to all of us, except Mr. Sweeney, who is in great shape, and that is the whole issue of weight-loss programs.

[Laughter.]

Mr. Baca. He is getting in shape for the baseball game.

Mr. Serrano. There you go. This is an issue that affects just about every American I can think of. Everybody except for a couple of people in this country at one time or another look at the possibility at one of certain ads and all the claims that they make.

Now, how is this going? What are you doing to deal with these issues, and how much fraud is involved in this? And lastly, how much of this issue belongs to you, and how much of it belongs to the FDA?

Because some of the claims being made deal with what we have to drink and eat and pills and other issues.

Mr. Muris. That is an excellent question, Mr. Serrano. We have a growing problem of obesity and overweight in the United States. We issued a report last September, and we found that despite unprecedented levels of enforcement by the FTC in the 1990s aimed at fraud, compared to a sample from nine years before, there were many, many more ads that were obviously fraudulent, obviously false than there were earlier.

What is worse, they were running in mainstream, respectable media. As an example, page A-3 of the Washington Post said, ``FTC Decries Deceptive Weight Loss Ads.'' On the same day, page A-13 of the Post had a one-quarter page, obviously fraudulent weight-loss ad.

Now, we have met with people from The Washington Post, and I believe them when they say that they think they would do a better job.

Dr. McClellan, the new head of the FDA, is committed--and I have seen it with the resources FDA put on the issue--to do more in the diet-supplement area.

We are actively working with the FDA. I have also made speeches and have had numerous meetings with media representatives asking them to screen out the ads that are obviously fraudulent.

I am not asking them to hire scientists. What I am saying is that we are working on a list we will give them of obviously false claims. Unfortunately, there is no magic bullet, the way to lose weight is diet and exercise, but many of these ads are wrapped in very scientific-sounding claims.

People in white coats claim this study and that study shows that you can take a pill and eat all you want. We got together a scientific panel. The scientists have told us that those kind of claims cannot possibly be true. We are hoping to distribute this short list of claims and have more--particularly the mainstream--media not running these ads

We think that will help.

Mr. Serrano. Let me ask you a question. This is something that Mr. Baca knows well. And it is just something that comes to mind. Do you have a division--are you like the FCC that waits for somebody to complain before you investigate, or do you initiate investigations?

I was shocked to find out that the reason some shock jocks are investigated and fined by the FCC and other well-known

radio talk personalities never are is because it is based on complaints.

So if somebody thinks Howard Stern is bad he gets investigated and fined. Yet no one complains about Rush Limbaugh's outrageous comments. That is okay. Are you based on complaints or do you put forth the investigations?

Mr. Muris. Well, no, we tend to be proactive. We have done something with complaints that no one has ever done before, which is to compile tens of thousands of complaints a year into a centralized data system, and we and law enforcement officials all over the country look at that data and mine that data for patterns.

It is not like it used to be where you get a few letters in and complaints. We have people complain online. We are also about to do a nationwide survey trying to identify problems people have had to try to--and we will compare that with the kind of complaints that we get to make sure that we are considering the right sorts of actions.

So I think we do both. In the last 20 years the Commission has really shifted toward looking at basic fraud problems. My predecessors, Bob Pitofsky and Jodie Bernstein, I think, did an excellent job and we are trying to build on their record

HISPANIC OUTREACH

I think we are improving.

Mr. Serrano. I prefaced my comment by saying Mr. Baca would know about this--this probably will get me off Spanish TV forever from now on, but do you have a special department that looks at what is being said in languages other than English?

For instance, if you watch some of the Spanish TV throughout this nation, the most outrageous one is this gentleman who dresses in what we stereotypically perceive Jesus Christ to look like, and he goes around saying that for \$19.95, if you buy this particular thing that you wear on your wrist, you will be healthy forever.

And there are other claims made for things that you hang around your neck. So these ads prey, unfortunately, on people's religious beliefs and, in all honesty, their very strong Catholic upbringing. I look at these things and say, ``My God, somebody has got to put a stop to this.'

So the question is, do you also examine what is being done--and by the way, I am for the acceptance of 1,000 languages--but that does not mean that we can't have protection in all of them.

Mr. Muris. Well, this is something I feel strongly about. This has been a new initiative for the Commission. Since I have been there, we pay much more attention to Spanish-speaking consumers.

I grew up in southern California and also lived about five years in southern Florida. My sister teaches English as a second language at Fullerton State in California, and, of course, she has a lot of Spanish-speaking students. I grew up more in San Diego, but I did live in Orange County for a summer. So we have started. The first thing we started to do was to translate and to work with the Spanish-speaking media in terms of our consumer education.

We have, ``Robo de Identidad'', our pamphlet about identity theft. Previously, we did not do this. I thought that was a mistake not to do it, and fortunately this subcommittee has been giving us enough money so that we can do this.

Now we have also started taking the next, harder step, which is looking at law enforcement in the Spanish-speaking media. We brought one case, and we are trying to hire more attorneys.

Obviously, it is a tough market for very good attorneys who are fluent in both English and Spanish, but we are finding them.

Mr. Serrano. Do you monitor?

Mr. Muris. Yes, we do, however, this part of the program is in its relative infancy. The first thing we did was consumer education, and we spent a lot of time with Spanish-speaking media talking to them about the consumer-education issues.

I have been at the FTC less than two years, so this is a new program. But we are now starting to move to the enforcement efforts and review the kinds of things that you are talking about.

Mr. Serrano. Well, thank you, sir.

Mr. Wolf. Mr. Sweeney.

Mr. Sweeney. Yes, thanks, Mr. Chairman. And let me start by thanking you for bringing to this hearing the issue of video games and the violence and explicit sexual nature.

My good friend Mr. Serrano has a lot more in common with me than that because my first line of questioning was going to go in to the dietary supplement, and while that may be mundane, I think it is critically important.

I have been one of those who have been most aggressive on the idea that we need to reform the dietary-supplement industry and the claims that it makes, so I am going to go--touch on that a little bit.

But on the video-game issue, it is critically important and I think that it cuts to the core of a couple of elements that are important. The notion of personal responsibility plays in here somewhere, and you are, unfortunately, Mr. Muris, in the place that you have to--that that debate really affects your capabilities, and I want to talk about that.

But we are talking about consent, consensual behavior in adults versus children, and I think that it should not be lost on any of us the debilitating impact those images would have on anyone, but in particular on children.

And as a result I intend to get on Mr. Baca's bill today, because I was not quite aware of it prior to this, but I am now.

You talked a little bit about the coordination that FTC does with FDA as it relates to dietary supplements.

What I am interested about it is, as it relates to dietary supplements. I have got a bill that calls for the ban on ephedra and anabolic steroid enhancers and things like that, and really the targeting of certain audiences, most particularly the minor children, for a variety of reasons.

I am as well concerned about some other areas where you would pass in jurisdiction.

And one of the questions I had was, is there a lot of coordination that FTC has developed with HHS?

And what other federal agencies besides FDA need to be involved, and are you involved with those agencies?

Mr. Muris. We have had good cooperation with FDA, and I think that cooperation has moved to the ``excellent'' category with Dr. McClellan, who just took over last November.

On ephedra, specifically, I participated in a press conference with Secretary Thompson and with Dr. McClellan, where we talked about the problems with ephedra. The Commission has brought cases involving false claims for ephedra. You will see that we have been active in this area and the activity is increasing.

Mr. Sweeney. It seems to me, that in a technical capacity, the FTC has enhanced dramatically with the linkages that are there. So I am glad that you have got those linkages and would encourage them even further.

Do you plan on using similar procedures, similar coordinations with--when evaluating advertising about so-called reduced-risks tobacco products?

Mr. Muris. Oh, certainly, it is essential to work with HHS, to work with the National Cancer Institute in particular, because that is where the scientific expertise in evaluating the products is.

Mr. Sweeney. I do believe in the idea of convening a joint workshop, or another public forum might work well there, and I would encourage you to do that.

I have another hearing to go to. That was predominantly what I was interested in. And I am going to submit to you some other questions, and I look forward to working with you.

Chairman, with that I give back my time.

There were some questions, and if I could steal this from my friend, Congressman Baca, because I just want to reemphasize the point Chairman Wolf started with.

And here is a description of some of these games. And I have noticed that I have seen it on television as well, different games advertised. And frankly, I did not pay a lot of attention to it, but will now.

One game is ``Grand Theft Auto III'' and ``Grand Theft Auto--Vice City.'' I think that particular--that description is partly up there. But this is the description of it: Depicts characters having sex with prostitutes, carjacking soccer moms, attacking elderly persons and killing police officers. The game's even imitate the sensations of a drug hop.

``Max Payne'' is another game depicts the likes of sodomy and oppression, including a depiction of Abner Louima being sodomized by a vibrating dual shock controller.

``BMX--Triple-X''--lets players spend their money in strip clubs, showing live-action footage of naked strippers.

``DOA Volleyball''--allows players to create female characters, with full control over breast size, and the option to have the character run topless.

I have three children--two in their teen years, one about to be. Two of them are girls. I am just outraged. And I am a strong believer in protective speech and expression, but we need to really focus our attention on protecting these next generations. So, I look forward to working with you on that.

Mr. Wolf. Thank you, Mr. Sweeney. Mr. Kirk, and then Mr. Baca.

Mr. Kirk.

DO NOT CALL DATABASE

Mr. Kirk. Thank you. Thank you, Mr. Chairman.

One of the most popular programs we have in the commission for my district is--and I note that the FCC will have a similar program for it. Because your rule, as I understand it, does not control any rotary or automated calls in-state. Long-distance telephone companies are not included. Banks, credit unions and airlines--all off the list, right?

Mr. Muris. Well, if they do their own telemarketing.

Mr. Kirk. Right.

Mr. Muris. A lot of these companies use for-profit telemarketers, in which case they would be subject to the list. But it is clear that, with the addition of the FCC, the rules' coverage would be much greater, and I anticipate that that will happen.

Mr. Kirk. Are you coordinating--going to use the same database?

Mr. Muris. Ah, yes. The FTC will create and monitor the database. It would not make any sense to have two databases. Indeed, we hope there will be one national database that the states could use, as well. We are coordinating; we spend a lot of time talking to the FCC.

Mr. Kirk. But what is the timing for the FCC?

Mr. Muris. Well, obviously, I can't speak for the FCC. But I believe they are on track to do something by the summer. Sign-ups will begin for our national registry around July 1st. By the time the telemarketers access the database, and by the time we begin enforcement, which will be around October 1. From everything I know, the FCC's rule will be up and running by this time.

Mr. Kirk. Very good news. Under the current plan, an owner of a telephone line must reregister for each number. So you have got to go through the bureaucracy, every side matching, putting in your name, address, everything each time. Why can't I interact with the FTC Web site and say here are the two telephone lines coming into my house?

Mr. Muris. Well, this will be very easy to do. You can do it by the telephone or you can do it online. And what it essentially requires you to do, if you are at that phone number, is to program in the phone number.

Mr. Kirk. Right.

Mr. Muris. So, it will be very simple to do. We are expecting somewhere between 40 and 60 million telephone numbers. And to do this at a cost that is feasible, we need to do it in a way where people do not speak to people. One state did this originally with file cards. We cannot have 40 million file cards. But we believe the technology is there to do it very easily, either over the phone or online.

Mr. Kirk. I would want you, if you could, to look into on the Web being allowed to do not call multiple lines.

Mr. Muris. Well, I think, Congressman, that would be easy to do. You can--I mean, you can register multiple lines. It is not a problem. But we need----

Mr. Kirk. If you could do that in a way that I do not have

to retype my name, do not have to retype my address.

Mr. Muris. Sure, sure. That is an excellent point.

Mr. Kirk. If there is a prompt that comes up, ``Do you have any other lines that you want to register?''

Mr. Muris. Yes, yes. I believe--I am 90 percent sure that is the way we are doing it. If not, I will find out why we are not.

Mr. Kirk. Thank you.

You also have a big exception here for a previous business relationship. And, of course, all of these companies are going to claim a previous business relationship. On the form that I fill out, if it is Web-based, can I check off I do not even want people with a previous business relationship to call me?

Mr. Muris. We have the advantage in creating this list from the fact that a lot of states have similar lists. Almost all the states have this exception. When the states go out and ask their consumers about it, the consumers are happy with it. In fact, one of the reasons we have the exception is for magazines, for example.

There are an awful lot of people who just sort of throw out their mail and they do not renew until they get a call. So, we thought that the exception made sense. For people who claim a business relationship and can't prove it, we are setting up a complaint system.

The complaint system, again, will be automated. We plan to put a lot of resources--and you have given us enough money to do this--a lot of resources on enforcing this.

So we will enforce that vigorously. But the experience has been, and shown through consumer surveys, that in states that allow this exception the consumers seem to be happy with it. And I think one of the reasons they are happy is because it does, from their standpoint, make sense.

Again, the overwhelming majority of the phone calls will be affected. And, if a consumer is still bothered, he can say do not call me again, put me on your individual ``Do-Not-Call'' list and that will happen. So there is a way to avoid those calls.

Mr. Kirk. I would like to pressure you to have a really do not call list. So when you register for a prompt to say ``Even those with a previous business relationship.'' And if you check that off, you are done.

Mr. Muris. I understand. I understand what you are saying.

Mr. Kirk. Also, there is an exception saying that you have to have the number, the caller id number, which for a lot of these companies is fly-by-night--it is Nevada today and it is Mississippi tomorrow--and you have an exception that the company name must be included if technically feasible.

Can we delete that?

Mr. Muris. Well, what----

Mr. Kirk. The company name should be there, period. There should be no exception.

Mr. Muris. We have done two things that I think address this problem. One problem is the problem of people who have caller id that are no longer going to be able to block----

Mr. Kirk. The number.

Mr. Muris [continuing]. The number.

Mr. Kirk. But the number is fly-by-night. I want to nail

the company.

Mr. Muris. Well, there is a problem of fly-by-night telemarketers. Fortunately, the reason that this ``Do-Not-Call'' system can work--as opposed to a do not spam system--is the overwhelming majority of telemarketers are legitimate businesses. For people who are fly-by-night, they are not going to pay much attention to the law. We are going to have to go after them individually and that is what we will do.

Mr. Kirk. Right.

Mr. Muris. We are also addressing in the rule the problem of dead air. Because some people when they receive phone calls--because of these predictive dialers, you can receive a phone call and there is nobody there and that can be frightening, besides annoying.

We are essentially abolishing dead air. We are allowing predictive dialers; but, if for some reason they can't have a person when they call you, they have to play a recording.

Mr. Kirk. But would it be possible to delete the ``if technically feasible'' exception? You must identify the company.

Mr. Muris. Let me go back and look at that issue. There are I understand, some technical issues. But let me take a look at it.

Mr. Kirk. Okay, great.

And then, charities are totally exempt. And there are some charities that we really love. But it is--as an attorney that is set up--it is not difficult to, the phrase again, to have a fly-by-night charity.

Could I have a checkoff that says even charities can't call me?

Mr. Muris. Well, here is the way it works with charities. And, again, we have the states experience. Charities have some constitutional protection that other organizations do not have I think, quite frankly, it would be difficult for us to block all calls from charities. Under the law, we clearly have to apply some different standards.

Indeed there is a case before the Supreme Court right now addressing this issue, and there have been several cases about how charities have more rights. That is the first point.

The second point is, charities are not completely exempt.

Mr. Kirk. But the charity's right to bother me overrides my right to be silent in my home?

Mr. Muris. The charities----

Mr. Kirk. I do not think the Supreme Court would be with you.

Mr. Muris. Well, it is an interesting area of law. And the charities----

Mr. Kirk. And the charity, and the Supreme Court would strike down a provision that the FCC puts in that allows me to designate that I do not want a charity calling? Are you saying that they would strike that down?

Mr. Muris. Here is what they might say. The position we have taken is, you can't exempt yourself from all charities. You have to do it on a charity-by-charity basis.

The charities are going to sue us over that. I do not know if they have actually filed a lawsuit yet, but we are told they are going to sue us and say, ``That is unconstitutional.''

Now, what we have found, there are some good things about the charitable calls in terms of the states that have them. Charities are more careful than a lot of commercial telemarketers in who they call. They tend to call primarily people who donate to them.

And we have found that consumers overwhelmingly do not resent the charitable calls the way they resent the calls from the non-charities.

But, our rule, for the first time, will allow someone who is called by a charity to tell that charity, ``Do not call me again.''

Now, we think that is constitutional. That is a narrowly tailored position. But, again, that will be tested in court.

Mr. Kirk. Well, we have a request here for \$18 million, and I hope the committee supports that. And I really hope you take a look at the previous business relationship checkoff and eliminate that, identify the company, if technically feasible. You must identify the company.

Mr. Muris. Well, and we will look at that. And one thing that this Congress passed and the President signed was an authorization. And one thing the authorization requires us to do is a top-to-bottom, fairly quick study, and we will certainly do that on those issues

I will look at that one issue, and we will get back to you.

Mr. Kirk. Thank you. Thank you, Mr. Chairman.

Mr. Wolf. Thank you, sir.

Mr. Baca.

MEDIA VIOLENCE

Mr. Baca. Thank you, Mr. Chairman.

First of all, I would like to thank the New York leadership in bringing this attention to the committee--well, I feel is very important as well as many of my colleagues on both sides of the aisle.

Because, really, it is about protecting our children, it is about violence, it is about attitudes, it is about behavior. That is what is going on today in society. And when we look at what the Chairman indicated in reference to a multi-million-dollar industry right now that is using this at the sake of making profit.

Yet the effects that is changed when we look at incarceration of individuals in our prisons right now that is left with that aggressive behavior, such video games and others that are being sold--and I do appreciate, Mr. Chairman, the acts that have been taken by the Federal Trade Commission, too, as well--as some of the sting operations that you operated during the time to demonstrate that a lot of these video games are being sold to children under the age--between the ages of 13 to 16 or under.

And 78 percent of children between the ages of 13 and 16 are able to purchase these mature-rated games that are only supposed to be for adults, because they are able to do that.

We realize that it is also part of the responsibility of the parent as well, but it is also the responsibility of industry, and it is our responsibility of the federal government to be involved in what we believe is occurring right

now that has led to a lot of the violence that we have had, such as Columbine and Germany and other areas right now.

And many of the parents right now are totally unaware of what is in this game. Congressman Sweeney just described, you know, a few of the many tapes that are sold. And a parent gets that.

I mean, like, who would think of ``DOA Volleyball''? I mean, I would think that is--as an athlete, that is an athletic game--you know, volleyball playing back and forth, and what is DOA?

But then when you start looking at what is on there. The parents then actually start seeing it with the children--``Oh my God, I could not believe what is on there.''

But it leads to aggressive behavior. And psychologists and studies and the medical association have proven that children then begin to assimilate that action, assimilates that role. That is why there is a difference between watching it on TV. You do not assimilate that role; you do not play that.

In the video games, you are actually assuming the identity of character. You are actually that character. You are transimposed. You now have become that person, so you become the aggressor. It is like brainwashing, in a sense

The player actually participates in that video game. The video games are displayed repeatedly, and they become addictive. And then, you know what?

You can play those as often as you can--unless the parents are aware. A lot of parents are not aware of what is in the content of these games.

So, I commend you, Mr. Chairman, in terms of really operating some of these things.

These are available. There are some, like Wal-Mart--I have got to give Wal-Mart credit--that is the only one that says, basically says, ``I will not sell to anyone, you know, under the ages.''

But many of the others do it for profit. They do not monitor themselves. And a lot of these kids, then, are taking these video games. And that is why, when we look at the amount of crimes that we have that has escalated over the period of time, the behavior in our society has changed.

And I think it is time that we began to do something. I think, you know, that is why, just even watching the additional video game--and when you talked about it--I think that is very important, Mr. Chairman. And I commend you, you know, for those efforts.

And I look forward in working, not only with you, Mr. Chairman, and also with the FTC, Mr. Chairman, in terms of what we might be able to develop to stop these kinds of video games that would be available to children that does violate the First Amendment.

As Michigan and Missouri, also--I mean, Missouri has also shown it has not. So, we hopefully, that we will be able to work with you as we move this Protect Our Children Video Game HR 669.

Mr. Wolf. Well, I appreciate Mr. Baca's efforts and I will work with you. I had someone tell me, and this may not be accurate, but they said during the time of the sniper there were 20-some deaths, that there were more deaths in the inner

city, where inner-city kids got killed, and yet it was never covered.

Now, I originally come from an inner-city area, in Philadelphia, south Philadelphia. I think that Mr. Serrano would understand this better than I understand it--but there was so much coverage which took place with regard to the sniper, rightly so, it paralyzed our area.

But if these figures are accurate, and we are going to ask the staff to check with the D.C. government, the police, to see the violence level in the inner city, and if that level was simultaneously with or perhaps even higher, there may be a whole series of this violence taking place that many are not even focusing on.

So this is an important issue, and I commend Mr. Baca. I would also ask you to involve Mr. Baca in the FTC efforts and we can work together and try to accomplish something.

And I would say to my good friends in the business community, as a free-market Republican--I think those of us who are for free markets we tend to be more conservative than maybe our friends on the other side of the aisle--I think we have a greater responsibility, a greater burden in some respects, because as we are always talking about the market and talking about the business side and talking about the free market.

I think we really have a greater responsibility in some respects to--and so I am going to put my shoulder to the wheel with Mr. Baca and the others that joined us to do something about it, and I would urge those who represent this industry, probably many good people who are not even really aware of what is actually going on. I mean, here I am at my age and I had never seen this until you people came by.

So I am sure there are some people, law firms that are actually out there representing some of these companies and may not even know what is involved. So thank you for your testimony, and I also thank Mr. Baca and the others

On the do-not-call list, when will the consumers be able to register to be on the list, and when can people expect a decline in telemarketing calls?

[The information follows:]

[GRAPHIC(S) NOT AVAILABLE IN TIFF FORMAT]

Mr. Muris. We anticipate that registration will begin July 1st. Registration will--everyone in the country can sign up online, and because of the concern over harming the phone system of the United States if we did it all at once, we are going to do it in rolling, starting in the northwest part of the country on July 1st.

By October 1, people should begin to see a decline in phone calls.

Mr. Wolf. October 1st?

Mr. Muris. Yes.

Mr. Wolf. How will consumers registered on the list be able to report violations if they continue to receive telemarketing calls, and what will the penalty be for not complying? And how will you enforce it.

Mr. Muris. Part of the money that you have given us for

this will involve enforcement and building an infrastructure to process complaints, because we expect a very large number of complaints.

People will be able to complain online, and will be able to complain on a phone system. We will use that information. We are training--well, first of all, we are putting together material to, for both consumers and the business community on how to use and comply with the do-not-call registry.

But we are also working in-house and with the states on a significant enforcement effort. We will use this database of complaints as they come in as our primary enforcement tool in terms of finding violators.

Mr. Wolf. And what about the last point, with regard to penalties?

Mr. Muris. Oh, I am sorry, with penalties, yes. The penalties can be as much as \$11,000 per violation. We are expecting--

Mr. Wolf. That is a little steep, isn't it?

Mr. Muris. Well, it is a little steep if it actually happened. Courts never impose the full penalty, and we certainly--if we find isolated violations--quite frankly, we will tell people, and if it does not happen again, then that is fine.

Mr. Wolf. Yes, I think they have to repeat.

Mr. Muris. Sure, absolutely. What we are looking for is systematic violations. The courts have never been willing to impose the highest fines in areas where these penalties apply.

But we hope that if we really do have egregious violators, that the courts will allow us to put hefty fines on them.

SPAM ENFORCEMENT

Mr. Wolf. According to a recent Washington Post article, roughly 40 percent of all e-mail traffic in the United States is spam, or unsolicited messages from companies trying to sell products to Internet users.

I understand that the FTC has taken several law-enforcement actions against companies using spam to operate the get-rich-quick schemes, using spam to route consumers to adult web sites that we referred to.

What can the FTC do not only to eliminate unsolicited fraudulent e-mails, but to reduce the number of unsolicited e-mails? Have you thought of a national "do-not-spam" list for that?

Mr. Muris. That is a very tough issue. Let me talk about it briefly. We are the only people in the United States that want spam. We receive over 100,000 spam a day.

What we do with those spam are--since I have been there--we actually have something called the refrigerator which looks like the refrigerator where we store the spam.

Like we say, we try to take the deceptive spammers out of the refrigerator and put them on ice.

We have brought dozens of cases. In some ways it may be only a drop in the bucket, but to do something about spam is going to require technology. It is going to require law enforcement. It may require new legislation.

A potential problem with a ``do-not-spam'' list is that it

appears that a very large number of the spammers are already violating the laws. So, unlike the telemarketers, there may be no way to really reach them and deal with them, at least upfront.

We are having a three-day workshop beginning on April 30th. One of the things we are going to announce at the workshop--we are doing it right now--we are collecting a random sample of spam, and we are going to categorize it in various ways, including how many of them are already breaking laws.

This is a very difficult problem. And if you think about it, it is because the cost of making additional telephone calls or sending additional letters in the mail is real. The cost of adding another 100,000 e-mail addresses, is zero, essentially.

So you can send out just gigantic amounts of spam. It is a serious problem and, as I said, I think it will take a combination of technology, education, law enforcement. If there is some new legislation that would help, I would certainly support it.

One of the things that we are hoping to do with the workshop is to develop a better understanding of what legislation might make sense, if any.

Mr. Wolf. Internet gambling, during fiscal year 2002, the FTC found that minors can easily access online gambling and that minors are frequently exposed to advertisements for online gambling on general-use, non-gambling web sites.

In order to address this issue, in June 2002, the FTC issued a consumer alert to make parents aware of the risk associated with children gambling online.

What activities are you planning for the future to ensure that parents are informed of online-gambling risk?

Mr. Muris. As you know, Mr. Chairman, you and I participated in an event that you sponsored last year to try to get some more publicity for this issue.

We are trying to spread the material that we have put together and refine it. We are talking to various groups that you put us in touch with.

I also know, and this is beyond what we do, that you are a co-sponsor of Mr. Leach's bill, and that bill, if it became law, may have a more direct--I am sure you know the legislation I am talking about--may have a more direct impact.

But we certainly think education is an important part of it, and I think we have had good success in reaching people who were unaware of the problem. We intend to try to build on that education effort and continue spreading that message.

Mr. Wolf. In the area of merger reviews, approximately half of the FTC staff work to maintain competition in the marketplace, including the prevention of anti-competitive mergers, but due to legislative changes and a reduction in merger activity the number of pre-merger filings requiring a review declined by 76 percent in fiscal year 2000 to 2002.

With such a large reduction in merger-review workload, why doesn't the budget show any reduction in the staffing requirements?

Mr. Muris. Well, here is what happened. Historically the FTC has always spent about half of its competition resources on mergers.

During the merger wave of the 90's, the number went up to

somewhere about three-quarters of the competition budget. There has been a significant decline in mergers. The change in premerger filing requirements were made with the idea that the overwhelming majority of the mergers for which filings were no longer required did not raise competitive problems.

So, although the filings are way down, and the number of mergers are somewhat down, there are still significant problems in mergers. What we have done is return the historical relationship of roughly 50-50 in the merger review process and the non-merger process.

But what it meant, quite frankly was that the Commission really stopped its non-merger enforcement significantly. What we have done is shift back to non-merger enforcement.

In the drug area that I mentioned, we would not have been able to do that, you know, four or five years ago, to bring the kind of cases that we are bringing----

Mr. Wolf. Did you just reassign people?

Mr. Muris. Yes, absolutely. And we have returned again to a more historical relationship which the commission followed for most of the 1980s and most of the 1990s that roughly half of the competition work involved.

So there has been a significant reduction in the amount of resources going toward mergers. But they have gone back to where they used to be, which is the non-merger area, which I think is a very good use of the taxpayers' money.

Mr. Wolf. Of the fat-finger telephone scam, you remember last year at the hearing, we had -----

Mr. Muris. That was last year's video.

Mr. Wolf. Yes, that was last year's video.

This scam occurs when consumers mistakenly misdial the popular long-distance carrier number such as 1-800-COLLECT and is unwittingly overcharged for that call by another long-distance carrier that did not identify themselves or their rates before placing the call.

I understand that the FCC issued a consumer alert on the topic and has fined two carriers. What has the FTC done to inform consumers of this?

Mr. Muris. Well, we have done a couple of things. We have consumer-education materials. And we also have brought cases where we had jurisdiction.

As we discussed last year, we do not have jurisdiction over common carriers. I have asked the Congress to provide us with that jurisdiction. The Senate Commerce Committee, in fact, voted a bill with that jurisdiction in it for the FTC last year and the Commission intends to renew that request in this Congress.

Mr. Wolf. Okay, I have one or two more, but Mr. Serrano, you want to--okay, just----

Mr. Serrano. Let me just first comment on something you said, Mr. Chairman, which was very important, about the coverage of the sniper and the fact that other issues were not covered, that is, people who were being killed at the same time.

I do not know that this is an FTC issue as much as it is just the way media covers issues in this country. I remember with all the sensitivity that this case has that we not long ago had a missing young woman in this city and that was the

number one issue on TV. And yet at that same time, there were 450 missing people in Washington D.C. that no station ever covered.

And so a lot of that is just how the media reacts to these things. And what you folks could do about it. I do not know that there is anything to do about it.

GASOLINE PRICES

Gas prices--I see a lot of people laughing when I said this, this is a scary one. The American public believes, I am sure, for the most part, that the situation in the Middle East has something to do--or has everything to do with the escalating gas prices. Notwithstanding the fact that last week they went down a few pennies.

One, are you equipped to tell us if that is true; to what extent it is true; to what extent it is oil companies taking advantage of the situation? And if so, what can you do about that and what are you doing about that?

Mr. Muris. The Commission has a lot of experience in the energy industry, particularly through merger investigations. Because of concerns over gas prices last year, we started a monitoring project in 360 cities at the pump and another 20 cities at the wholesale level.

What we have done is we have built--using our economists, we have built a model to predict what prices should be based on historical factors, including crude-oil prices, which is the biggest single factor.

When the prices turn out to be significantly different than historical prices, then we go out and look for the reasons. The program has just gotten up and running, but we found a few cases where there are variances from what the history predicts that they should be.

It usually turns out there is something extraordinary, like a refinery, is shut down. We have found a couple areas, though, that look like that they merit some investigation, and, in fact, that is occurring.

Crude-oil prices: One of the reasons, there were a series of extraordinary factors, but crude-oil prices did go way up. They went up from the low 20s to the high 30s, because of concern over what might happen with the war. It looks like, fortunately, that the worst fears have not happened. Prices have come back down considerably. They are not quite back as low as they were.

The Commission has spent a lot of effort looking at oil prices. We will be producing a couple of reports this year about spikes in prices.

One of the problems is that because there are so many different grades of gasoline in so many parts of the country for environmental reasons, if something happens in the pipeline for one of these relatively small areas, the refinery they use, for example, shuts down, other gasoline can't be shipped in because it is not the right environmental grade.

We have encouraged the EPA to look at some of the market considerations as well when it designs these grades.

Unfortunately, we have not been able to find violations of the antitrust law as the main source of these price increases.

But we do now have a monitoring system where we are able to detect suspicious problems that we did not have before.

The system will have to run its course for a few years before we really know what it tells us.

Mr. Serrano. That is amazing. Is there a way to alert the American public to the fact that there are a lot of different factors? Because we have bought the story that the gas prices are somehow related to everything that is happening overseas. And if the prices keep going up, they will blame the government. That is the easy way out. They will blame all of us.

How do we educate, then, the public to make sure that they are aware of everything that is going on? Or at least enough to make an intelligent assessment?

Mr. Muris. Well, that is one of the things we hope to do with these reports. We held hearings last summer, and we will release a report this summer. As you know, as demand goes up with the summer driving, prices tend to go up.

We will release consumer-education advice. There are some things people can do. For example, people tend--some people tend to buy higher-rated gasoline than they need. There are a certain kind of stations that are higher-priced than others.

One thing we have been aggressive about--this has not made some people in the oil industry very happy with us--but there are certain companies like Wal-Mart and others that have been getting into the gasoline business. Some states have tried to pass legislation to make it harder for them to compete. We have gone to those states and said that we thought that those state laws did not make sense.

So, there are some things we can do to educate the public and even some things we can do to affect prices.

Mr. Serrano. And are we doing them?

Mr. Muris. Well, I think we are. One of the things that I want to do, once we get all these reports together, is to try to go to someplace like the National Press Club--hopefully it will be at a time when oil prices are not too high--but try to make a speech about these various issues, and try to get it distributed. Because that is one of the main functions, quite frankly, of the Commission, besides law enforcement, is to address these issues.

SPAM ENFORCEMENT

Mr. Serrano. One other question. Not that I know anybody who does this, but, let's say a member of Congress gets an e-mail from those three folks over there on the issue of education. And gets an e-mail from these other three on the issue of the economy.

And then that member of Congress puts those folks on a list, and every time there is an education issue that he or she has, he e-mails them, and these people on the economy list, and they get e-mailed. Is that spamming?

Mr. Muris. Well, it is a very interesting question as to what spamming is. To us, we focus on commercial e-mail and not noncommercial. The kind of things you are talking about would have more First Amendment protection.

For example, in the phone-call area. Our Do-Not-Call list

does not apply to surveys that people do or to political fundraising. Congress is exempted, not surprisingly, from political fundraising from the Telemarketing Sales Act.

There are disagreements about what spam is. For us, we focus on what is the overwhelming majority of this bulk e-mail, which has been the commercial segment.

Mr. Serrano. Mr. Chairman, I have other questions--just a couple or more--that I would like to submit for the record.

Mr. Wolf. Sure.

Mr. Serrano. But just to say to you, sir, that I appreciate your testimony today, for my part, and I will stand ready to assist the chairman in helping you in any way that it can.

You know, if it is true--and I hope it is not true--that we are heading towards difficult economic times, more than ever, the consumer needs to be protected. Because there are people who will try to make money when there is less money to be made to make up for it.

And, as I told you, my experience with this in New York--in the State Assembly--as chairman of that committee, there are a lot of things that need to be done. I want to be supportive. So call on us and consider us allies in this fight.

Mr. Muris. Well, thank you very much. I really do appreciate your support and the Chairman's support. As I said at the beginning, we could not have done ``Do Not Call'' without you, and we are very appreciative

MANAGEMENT

Mr. Wolf. Thank you, Mr. Serrano. I just have two more.

On the staffing issue, what is the size--how many staff are there in FTE now?

Mr. Muris. We have in FTE, last year, I think it was 1,055, and this year, it will be somewhere there or a little bigger. Because of the uncertainty and the lateness of the appropriation, it will probably be somewhere in that neighborhood again

Mr. Wolf. And how would that compare with the last, say, 10 years?

Mr. Muris. Well, let me go back----

Mr. Wolf. And then you can submit a chart and tell us what you have from 1993 to----

Mr. Muris. Sure, I could tell you, because I am an old budget guy, I can tell you now--but we will submit a chart to you.

If you go back to 1980, the Commission had about 1,800 FTE. It shrunk to 1,200 at the beginning of fiscal 1986, and then it actually shrunk below 900 a few years later, which is just----

Mr. Wolf. And when was that?

Mr. Muris [continuing]. Which is just too small. That was in the late 1980s, early 1990s time period.

And then it gradually, although it bounced around a little bit, it gradually increased up above, well above 900. In fiscal 2001, I think, the number was 1,007?

Mr. Wolf. Correct.

Mr. Muris. 1,007. And then last year was the first significant increase in staffing. There had been very small increases before that.

I personally think a number somewhere around 1,050 to 1,100 is a good--very good operating level for the commission. And I certainly would not come here and ask, you know, for large increases of staff until we see how well we can do with this number.

I think it is a good number for us. I think we do excellent work for the American people. I would hope you would fund the request which right now is in that level.

Mr. Wolf. Do you recruit just out of college and just out of law school?

Mr. Muris. Well, we recruit in a variety of ways. In our Bureau of Consumer Protection, for example, that we attract a lot of experienced people.

We have a lot of couples. For example, when the husband or wife works in a law firm and makes a lot of money and the other spouse works at the FTC. One of them does good and one of them does well. [Laughter.]

I will let them decide which is which. But, we have a very good esprit de corps. We have the problem that as you know everybody in the government has that the baby boom is going to retire a large number of employees all at once.

At our annual staff retreat this year, this is an issue I am going to talk about with the staff, because obviously you can afford to have a few experienced people retire. But, in the second half of this decade, we are going to have a lot of them retire all at once.

That is going to be a problem throughout the government. The problem the FTC had in the 1970s when I was there is it did not have experienced people. Now we have very experienced people. But because of the way the baby boom lumped itself together, they--a lot of them are going to leave within a very short period of time.

Mr. Wolf. Do you have a program where you pay tuition costs for people who graduate if they come to the FTC?

Mr. Muris. We have the ability to give them some bonuses. We do not have the kind of program I know that has been instituted for the FCC of paying outside the market. It is very important that we have a significant amount of money for our bonus pool and to pay recruitment bonuses as well.

Mr. Wolf. How many lawyers do you have?

Mr. Muris. We have about half of the staff--500 and something--about half of our people are lawyers. We have started--at your suggestion we started a telework program.

Mr. Wolf. I was going to ask you that.

Mr. Muris. Including me, we have about 15 people who telework. I do not do it as much as I would like, with my responsibilities. But I find that it is a very good way to get things done. We started a program, and I think that is a great thing.

This is my sixth job in the federal government. I am a believer in government service. I think we do a lot of good work and that we should be rightfully proud of the good that we accomplish.

Mr. Wolf. I agree. Do you have flex time?

Mr. Muris. Yes, yes and we have a very good flex time program. The ability--one of my assistants is about to have a baby.

Mr. Wolf. Job sharing?

Mr. Muris. Well, yes. For example, we have two assistant directors in one of our consumer protection shops that do that. It is harder to do with managers, but we have even found a way to do it with managers.

Mr. Wolf. And you have on-site child care? Or do you have--

--
Mr. Muris. Yes. Yes, and it is one of the issues, because we have--something I never thought I would have to deal with is security concerns. And Congress has appropriately, I thought, given us some extra money to deal with some security issues and we are dealing with that.

We have two main buildings and one building is a long way from the other. We have had to consider recently is people whose kids are in the one building--if something happens.

And we have been working on how to make sure that we protect them. We have been thinking, as everybody throughout the government has, about what to do in an emergency.

Mr. Wolf. And flex time?

Mr. Muris. Yes, absolutely.

Mr. Wolf. And leave sharing?

Mr. Muris. Yes.

Mr. Wolf. So if someone is sick, you can share your----

Mr. Muris. Sure, sure. Oh, yes, absolutely.

Mr. Wolf. Have you used that lately? And you are--like if someone is ill and the others have donated?

Mr. Muris. Yes, yes. Yes, I think the people in the FTC world really do regard themselves as part of a family, and that includes our alums.

So we created an award--I created an award ceremony for lifetime FTC service. Casper Weinberger, Secretary Weinberger, who is a former FTC chairman came back to present the first award to someone whom he had worked with closely at the FTC 30 years ago.

So there is a lot of loyalty to the FTC by people who were once there.

Mr. Wolf. The last question to get back on the issue of video games. I just want to kind of get this for the record and help me.

Some research has suggested the violent video games may have an impact on youth behavior. If this or future research were to establish a clear link, could the FTC, using your consumer protection authorities, take actions to prevent the sale of mature video games to children, if they would show the link?

Mr. Muris. Yes, I think that is a very interesting question. The problem in an individual case--there are two kinds of links. One is the overall link between culture and violent behavior. That is a difficult link to show.

The problem is when you get down to individual products, the linkage there is very difficult to show. Most of the research, obviously, does not go to individual products, it goes to the generic category. But you would have to get down--for us to do something about individual products, you would have to get down the individual link, unfortunately.

Mr. Wolf. So they would have to be--you would have to--if somebody did a study on ``Grand Theft Auto'' and showed that

the activity in that took place----

Mr. Muris. Oh, well, no, I am saying, yes, well, no, obviously----

Mr. Wolf. What are you saying? You do not have to react specifically say video A created----

Mr. Muris. No, I do not think you necessarily have to show that--you have to show that video A--but most of the activity--most of the studies that I have seen and when we met with the Lion and Lamb people, they directed me to a lot of the research, it was at a fairly generic level.

Now, this kind of study would be very important, obviously, for the kind of legislation that people are talking about.

But, I am sorry, you had a----

Mr. Wolf. No, that is okay, we are going to have 15 minutes whatever happens, so we are okay.

Mr. Serrano. We are just voting on an increase for the FTC.
[Laughter.]

Mr. Muris. Don't let me hold you up.

Mr. Wolf. There are eight noes and four yeses.

Maybe what I would like to ask you to do, if you would submit to me your best judgment of what type of research would be necessary----

Mr. Muris. Sure.

Mr. Wolf [continuing]. Whereby we could show a clear link that would enable the FTC, using your consumer protection authorities, to take action, and also knowing you are a good lawyer, if you would also submit to me what you think the standard would be for somebody to take somebody to court and perhaps win in court

Mr. Muris. Sure, yes, sir, we could do that.

Mr. Wolf. Well, I think that is all the hearings that I have. And I really do appreciate your efforts there. I think you come to this with a good background with your experience, and I do believe that it is important that those of us who always are supportive of business, and I am talking about the free-enterprise system, really promote it and have that responsibility to make sure that it is responsible and not creating violence and doing these things.

So, you know, I think you have done a good job, and I thank, you know, your staff because none of us can do a good job without a good staff

Mr. Muris. Sure.

Mr. Wolf. So with that I have no more questions.

Mr. Serrano. Just to remind you that in spite of their successes, there is no need to break up the Yankees, okay?
[Laughter.]

Mr. Wolf. But that is under investigation. [Laughter.]

Mr. Muris. Thank you very much.

Mr. Wolf. Thank you very much.

Thursday, March 13, 2003.

SECURITIES AND EXCHANGE COMMISSION

WITNESS

WILLIAM H. DONALDSON, CHAIRMAN, SECURITIES AND EXCHANGE COMMISSION

Chairman Wolf's Opening Remarks

Mr. Wolf [presiding]. Welcome to the committee. We appreciate your attendance to discuss the SEC fiscal year 2004 budget request.

Congratulations on your confirmation. You have a challenging and very, very tough job. And I hope you will be willing to speak out and, as they say, speak truth to the powerful and not be silent. A lot of people that have been hurt in scandals such as Enron, Global Crossing, WorldCom. Enron--in my congressional district, result in a lot of people losing their jobs. So we do hope you will be very, very aggressive in speaking out against corporate corruption.

Your mission to protect investors and maintain the integrity of the securities market has become increasingly difficult as business transactions and financial markets have become more complex. Unfortunately, the need for more effective regulation of the securities and accounting industries became apparent last year for the failures of a number of the companies that I mentioned. These bankruptcies have left investors and a lot of employees really hurting--retirement plans absolutely worthless, while corporate executives became multimillionaires.

To ensure the future success of our markets, investors must have confidence that companies are accurately disclosing financial information, auditors are functioning independently, and investment advisers are not inappropriately influenced by investment activities.

Last year, the Congress took several steps to provide the SEC with the necessary tools to combat corporate fraud. The fiscal year 2002 supplemental provided an additional \$31 million to hire 125 new staff and begin important information technology initiatives.

The Sarbanes-Oxley Act provided the SEC with new responsibilities to protect investors, and in the fiscal year 2003 omnibus appropriation provides \$716 million, an increase of \$227 million. We are going to have a series of questions on the level of funds you can effectively spend. This Committee actually put more in than the Administration asked for. I wrote a letter to Mitch Daniels at OMB, suggesting that they go higher and higher.

Now, with these fund increases we want to know if you can effectively carry out your responsibilities.

Do you need every penny? Do you need more? Can you get by with less? Particularly, as you are reading in the paper of the budgetary problems and the deficits. So we are going to have a series of questions. Whatever you need, I can tell you, I cannot speak for everybody, you are going to have the resources from this Committee.

But the other side of the coin is, we just do not want you to bank money down there when we have other programs--embassy security--Tanzania bombing, Kenya bombing or whether the FBI has the resources it needs. So tell us what you actually need and what you can spend, and whatever that is, we will make sure that you get it.

The fiscal year 2004 budget requests a total of \$841 million, an increase of \$125 million over fiscal year 2003. We

are pleased that the Administration has recognized the importance of the SEC's work and with this very significant increase.

I am also going to ask you to renew the commitment made by your predecessors, Chairwoman Unger and Chairman Pitt, to require foreign companies to disclose any connections to human rights abuses, so this information is readily available to investors participating in the U.S. securities market.

And with that, I will just, again, welcome you to the Committee. We look forward to have a, you know, a good, long working relationship with you.

And I recognize Mr. Serrano.

Welcome

Mr. Serrano. Thank you, Mr. Chairman.

Let me preface my comments by reiterating your point about the work you did along with the minority side to make sure that these got actually more than the money that was asked for by the President. With that support, obviously, comes the need for scrutiny of how those dollars are spent, since it is rare that the Committee goes above the President on issues like this one. We are not talking about school lunches or Medicaid or something like that

Thank you for giving me this opportunity to welcome, Mr. Chairman, Mr. Donaldson for his first appearance before the Subcommittee.

Mr. Donaldson, I congratulate you on your appointment and I wish you the best of luck in dealing with the challenges facing the SEC. I also wish to express my desire to work with you on the many complex and troubling issues facing the agency in the hope that these issues can be addressed in an inclusive, bipartisan manner.

We would like to note that in addition to your distinguished career in the private sector and in public service, you served as counsel and special adviser to Vice President Nelson Rockefeller, the most recent New Yorker with such proximity to the presidency, not counting our junior senator, Hillary Rodham Clinton.

I also understand--and I must say, by the way, that I recall Vice President and Governor Rockefeller, Mr. Chairman, very fondly. He did something a long time ago that a lot of people in this country did not dare to do, he invited Hispanic New Yorkers to get involved in politics, and he did it very gently by not suggesting they become Republicans, thank God----

[Laughter.]

But that they become involved. And he probably had as much, if not more to do with our political movement than a lot of other people in my own party. And I think that that needs to be said.

I also understand you are considering expanding the Securities and Exchange Commission's presence in New York City into the historic Woolworth Building, where the office moved after the collapse of the World Trade Center towers. I hope you decide to spend more time in New York, the financial and investment capital of the United States. It will be of great help in restoring the confidence of American investors to have

an increased SEC presence right there where it all happens.

The recent corporate scandals were the catalyst for the very substantial increase in your budget. I trust that you will use this additional money wisely, although you should know the eyes of the public and of Congress are close upon you.

Again, I congratulate you on your new position, Mr. Donaldson, and wish you the best of luck.

Thank you, Mr. Chairman.

Mr. Wolf. Thank you, Mr. Serrano.

Welcome. You can proceed. You can read your whole statement, you can summarize, whatever way you think is appropriate.

SEC Opening Statement

Mr. Donaldson. Well, I would like to make a brief statement.

Mr. Wolf. Sure.

Mr. Donaldson. But before I do I just want to acknowledge your acknowledgement, tell you how pleased I am to be here and how much I hope that in the days and months ahead we can work together.

Chairman Wolf, Ranking Member Serrano and members of the Subcommittee, I am very pleased to have the chance to testify today on behalf of the Securities and Exchange Commission in support of the President's fiscal 2004 budget request. The request for \$841.5 million is the largest amount ever requested for the SEC and comes on the heels of last year's appropriation, which was the largest single-year percentage increase ever provided to the Commission.

At the onset, I would like to thank you for the tremendous support and the leadership you have shown in ensuring that the Commission receives the resources necessary to fulfill its vital mission. Your ongoing efforts demonstrate convincingly that the Congress is dedicated to ensuring the financial integrity and vitality of our markets.

This is, as you know only too well, a critical time for the agency, and the way we address the challenges before us will determine the vitality of the agency for many years to come.

Although this hearing is for the Commission's 2004 appropriations request, I believe it is necessary to put this request in the context of our fiscal 2003 funding level.

Thanks to your efforts, the Commission was appropriated \$716 million to fund its operations this year as part of the recent omnibus appropriation. These funds will enable us to meet the remaining deadlines of the Sarbanes-Oxley Act, hire over 800 new staff, advance initial startup funds to the Public Company Accounting Oversight Board, improve our training efforts and address our most pressing information technology needs.

The new resources provided in fiscal 2003 will set the stage for 2004 and will allow us to focus equally on the complex issues that we currently face and on the fundamentals upon which the Commission was built--full disclosure, fairness, transparency and investor protection. Investor confidence is predicated on minding our own knitting in these core areas.

In addition, I believe that the efficient functioning of

the SEC is as much a part of investor protection as new rules and regulations. As I have said before, ensuring that our new resources are used to promote the effectiveness and support the modern mission of the SEC, rather than simply increasing our numbers, is one of my most important responsibilities as Chairman.

My initial review of the budgets that were prepared before my arrival for 2003 and 2004 suggests that the overall staff increase requests and the proposed allocation of the agency's new resources are warranted.

However, during the next several weeks and months, I intend to delve more deeply into each program area to verify personally that this is the best, most effective, and efficient use of our new staffing.

I would therefore like to reserve my option to make changes as we go along. My staff and I will work closely with the Subcommittee as we finalize our resource allocations among the agency's programs and across fiscal years

New staff and the need for regular training go hand-in-hand. For this reason, the Commission will increase significantly its emphasis on frequent, in-depth staff training.

Management accountability is also central to our ability to perform our duties. I intend to enhance the Commission's operations by establishing a system to better train and evaluate and develop and mentor managers and supervisors.

This effort is consistent with the goals of the President's Management Agenda and is, of course, the right thing to do. We cannot expect SEC staff to successfully fulfill their duties if they do not have leaders with the skills and tools to lead them, and we must set expectations and reward our managers and staff accordingly.

The Commission's operational challenge also extends to our information technology program that has been structured to maintain existing systems, undertake a few smaller projects each year and complete only one large-scale initiative at a time.

We have accomplished this level of activity primarily by developing a robust capital planning program and relying heavily on contractors and outsourcing.

To meet our future needs, program staff must work side by side with a reinforced information technology staff, and we must increase the number of information technology program managers we have available to assist the program offices in developing major applications.

We will hire and use our new technology resources aggressively, but thoughtfully. As a result, these resource targets may only be met over a longer period of time, but they will be met with people and systems that we are sure can perform our vital tasks.

The unprecedented increase in resources for the agency presents many challenges, but, more importantly, many opportunities. I have had the opportunity to preside over similar management challenges while in the private sector and have seen first hand what it takes to grow rapidly and responsibly and improve performance at the same time.

I look forward to working with the SEC staff and with you

to effectively grow the organization and build upon its well-earned reputation for being a preeminent government agency.

I might just close by saying that I am honored to serve as Chairman of the SEC, and I look forward to a strong relationship with this committee.

I would be pleased to answer any questions you might have. Thank you.

[The information follows:]

[GRAPHIC(S) NOT AVAILABLE IN TIFF FORMAT]

EFFECTIVE UTILIZATION OF RESOURCES

Mr. Wolf. Well, thank you very much. I will ask a couple--two different issues, and then we will go back and forth.

The committee gave the SEC \$716 million in 2003. That is a \$227 million increase over the fiscal year 2002 level and \$150 million increase over the Administration's request.

The President's fiscal year 2004 request includes an additional \$125 million--that is an increase of over 70 percent from fiscal year 2002 to fiscal year 2004. As you know, the deficits that we are talking about upwards to \$309 billion.

We do not know whether or not there will be a war in Iraq. We pray there will not be, but there perhaps could be. So we are going to be under enormous, and I think, speaking for myself, I cannot speak for the Republican Party, but I think deficits do matter.

And so, with the recognition of the pressure that we are going to have, and with the fact that you have a 70 percent increase over two years.

Do you think this is more than you can handle, and do you think you can use that all wisely?

Mr. Donaldson. Well, it is an excellent question. The bottom line, I think, is that it is not more than we can handle, although the challenge of handling it efficiently and effectively would be considerable.

I think you have to measure those increased funds against what has happened in our economy in the last decade, and particularly in the last three, four, or five years, in terms of the increased pressures on the SEC to respond to unprecedeted numbers of allegations--and beyond that proof--of malfeasance in a society. And we have, in the corporate and financial world. Our challenge here is to use this money wisely.

I do not mean to over-expand on your question, but I believe that we have an opportunity to take a new and fresh look at the structure of the SEC--the management structure within the agency--we must do so with a view toward making the agency more forward-looking, in terms of the anticipation of problems coming down the pike.

In other words, we have been so occupied with handling problems that have come in over the transom that we must resist simply adding more people to existing operations. We must attempt, in my view, to structure the agency so that it can anticipate some of the problems that are coming and, actually, hopefully prevent some things before they happen, some of the

things that threaten us that are going to happen.

ETHICS IN BUSINESS CULTURE

Mr. Wolf. Well, you know a lot of what we do is based on cultures. And if the culture is in decline and it is a little, small town and nobody is honest or ethical or decent or moral, you need a lot of policemen to enforce the traffic laws and going through red lights.

If you have a town where there has been aggressive enforcement and the town is made up of honest, ethical, decent, moral people, at the outset, some may say you do not need as much enforcement.

I would stipulate most the men and women of business are honest, are ethical, are decent and moral, do an outstanding job. But the reputations of some of these have gotten so bad that they have tarnished and they have hurt the entire industry. And they have hurt people, as I mentioned.

We had a job fair in my district with former Enron employees, the stories that they came and told you would break your heart. People 55 or 60 who have been wiped out. So you need to make it clear that if people violate the law, they are going to be prosecuted. And I stipulate that most men and women in business want to comply with the law, are honest and are ethical, perhaps saw an erosion of this thing going on and were not quite sure and the culture has sort of changed.

Are you going to make it clear that if people violate the law, that they will be prosecuted? So with the number of addition staff Congress has provided are you going to have sufficient resources?

SPENDING NEEDS AND STAFFING LEVELS

My question is: can you honestly spend that much money wisely, that fast? And I guess if you can keep in touch with us as they go through. I mean, we are going to probably give you whatever you honestly tell us you need.

But I would really feel bad if we gave you this figure and we come up to the end of the fiscal year and you have got a pot left out there and you are running through the SEC saying, get--and this is not meant as a joke--anything you want to buy, just buy it. Because in government agencies sometimes--I have been there where they say we are left with funding here; if we do not spend it all, the Congress is going to take it back.

And so they just spend. And so I think spending wisely is necessary, particularly if we have tough fiscal times, so we are not just wastefully spending funds without making that much of a difference.

How many additional staff do you plan on hiring in fiscal year 2003, and how will you allocate the staff--more for enforcement, financial disclosure activities, market regulation activities?

Mr. Donaldson. The budget requests will allow the Commission to carry approximately 4,000 positions in fiscal 2004.

Mr. Wolf. And how many do you have now?

Mr. Donaldson. About 3,200. And to reach this level we have

to hire 800 additional employees in fiscal 2003. It is going to be extraordinarily difficult and very likely not possible to hire all of this staff in 2003.

Part of the problem is that we are still grappling--not so much on the attorney side of the equation but on the economist and accounting side--we are still struggling with bureaucratic restrictions applicable to hiring non-lawyers.

And, as you know, we are hoping that legislation that is currently being introduced will allow us to accelerate our hiring of accountants.

Mr. Wolf. I would think the SEC would be a very desirable place to work, though. I mean, somebody who cares about public service, can make an impact at this time. I would think it would be a very good place to work and there would be a great appeal.

Mr. Donaldson. Well, it is a great place to work, and it has a great group of people and it is an agency that I have had the pleasure of watching operate for a long, long time. It is, amongst all government agencies, one of the finest, and it is a good place to work. And the challenges there now are considerable.

I think that our ability to hire good people is enhanced, not only by the challenge they face, but general economic conditions are such that you have a good crack at some very good people.

FOREIGN CORPORATION DISCLOSURE

Mr. Wolf. Last year, the SEC made important improvements to require additional disclosure from foreign companies listed on U.S. securities markets.

What additional steps have you taken to continue to ensure that American investors are not unwittingly buying securities from foreign companies that are helping to subsidize human rights atrocities in countries like Sudan or China?

If you were purchasing and knew that this company was involved in helping the government of Khartoum that had enslaved--you know, we could adjourn this hearing now, you could go home to pack. I could take you in a place where you could buy slaves--the year 2003, and we could buy slaves.

I could take you into village after village, whereby there is slavery. We could also hear stories of women who would tell you that the marauders came in on horses with AK-47s, they killed their husbands, they raped them, and then they took their children away. They took the children north to Khartoum. They took their children other places.

So if I knew that I had stocks in a company, and I have been to Sudan four times--Osama bin Laden lived in Sudan from 1991 to 1996--if I knew that I had--unwittingly purchased or my company had purchased, or I was in a retirement plan, I would be sick.

I would literally want to just be so sick. So what are you doing to make sure that the American investors are not unwittingly buying securities from foreign companies that could be involved in something like this?

And there were companies that were listed on the New York Stock Exchange that were involved--that were giving the

resources for the Khartoum government to buy helicopter gunships, where they were flying along the pipeline route and literally gunning down women and children.

What can you tell me that you are going to do about this disclosure, so that I or anyone else, or a teacher's fund, would not be faced with that?

Mr. Donaldson. Well, I am----

Mr. Wolf. Because the New York Stock Exchange when you were president was very, very reluctant--I had written Mr. Grasso so many times that I could almost paper my downstairs bathroom with the letters. And you get these irrelevant letters back that are totally and completely irrelevant, meaning--it says: ``I do not want to do anything, and I am not going to do anything.''

So you were there, you now have the ability to change things.

You know this Administration, our Administration. You know, I am a Republican, very conservative, support the President across the board. We are now part of an Administration that has a war on terrorism, and Sudan and Khartoum was part of that. What are you going to do as the chairman of the SEC to make sure that stockholders know that whatever they buy does not have links to terrorism or human right abuses.

Mr. Donaldson. Well, I hope you did not get any obfuscating letters from me back when I was Chairman.

But let me just say, I am aware of your concern, and I think the agency is aware of your concern. I have read through prior comments in this area. And I think that the SEC is sensitized to this concern.

Now, the weapons that we have are basically disclosure weapons. And we have the ability to insist upon disclosure--whether it is material, operations in countries such as Sudan--of any company. And I assure you that we will be looking very hard at those sorts of disclosures.

We also will be, I hope, working insofar as our authority is expanded by Sarbanes-Oxley coverage. We will be looking very hard at non-U.S. companies which fall under our jurisdiction for just the kind of open sunlight, if you will, that you are talking about in terms of the materials that must come from those companies. And I can say it no more emphatically. This is very much on our agenda and will continue to be so long as I am Chairman.

Mr. Wolf. Well, that is great. Because as you know there are companies in China--there are a number of Catholic bishops that are in jail in China now. One is in jail for giving holy communion to a member of this body. There are a couple of hundred evangelical house church leaders.

The new leader of China was the one who plundered Tibet. He was an enforcer in Tibet during the dark days in Tibet. In Tibet, now you cannot even have a picture of the Dalai Lama.

So some of the Chinese companies--I had a fellow came by my office the other day, Harry Wu, who was arrested and served 19 years in a slave camp in China--are making products for export to the West that some American companies may be involved in.

Now, business is business, I understand that. But I think disclosure and letting people know, so that they can make a judgment really is very, very important. And if you were able

to do that, I think you could probably head off a lot of things that may very well take place that we would find out five and six and seven years later. So I appreciate your commitment on that more than I can even tell you.

With that, let me just recognize Mr. Serrano.

FISCAL RESPONSIBILITIES

Mr. Serrano. Let me first say, Mr. Donaldson, that since September 11th the Justice Department, State Department, bureaus within those departments, such as the FBI, have gotten basically the dollars they asked for. But even though they have got those dollars, I never heard the Chairman tell them you will probably get whatever they asked for.

So I think you should take that statement very seriously in terms of the responsibility that comes with that. Not to make him or the Committee look back as we increase this amount of dollars, because we recognize the work you do and the importance of the work that your agency does.

You are probably the least known by the general public-- top, whatever five, 10 agencies that run or can help run the society. So please understand that when Chairman Wolf carefully says you will probably get whatever you want, that is a statement he does not throw out lightly. And you should see it for that responsibility that it is.

Let me speak to you on--this Subcommittee worked hard to overcome Mitch Daniels objections to fund pay parity and to provide the Commission the resources necessary to begin to hire over 800 staff members in fiscal year 2003.

SEC STAFF DIVERSITY

Here is my concern, when any organizations sets out to expand significantly, there is a natural temptation to round up the usual suspects to limit the search to those institutions from which you have already filled the ranks. If you do not reach out to minority-serving institutions, you will not have access to a large pool of talented, well-trained, highly motivated candidates. The broader and more diverse the pool of candidates, the more likely you are to hire the best and brightest America has to offer.

I have never asked a question with a musical background.
[Laughter.]

Mr. Serrano. I must tell you, there is something to be said about that. [Laughter.]

Mr. Serrano. So here goes my question.

What is the SEC doing to ensure diversity in the pool of candidates?

Mr. Donaldson. I am sorry.

Mr. Serrano. What is the SEC doing to ensure diversity in the pool of candidates?

Mr. Donaldson. Well, we have that very much in mind. Let me find a statistic here that will give you exact data on that.

Just to give you some specific numbers. The SEC is committed to hiring a diverse work force; 34 percent of the entry-level attorneys and 17 percent of the experienced attorneys hired at the SEC since October of 1999 were racial

ethnic minorities. We have had a similar success with examiners--22 percent, and accountants, 15.4 percent. The trends are in the correct direction on that.

Each year the Commission attends and recruits at the minority bar associations annual conferences, minority accountant professional organization conferences. The SEC's law school on-campus recruiting program consists of at least 50 recruiting events a year, more than 10 of which are targeted diversity events.

Recruitment efforts include outreach to student minority associations at law schools and bar associations, and attendance at diversity job fairs for accounting, finance and business professionals. This year we have identified additional professional organizations for women and racial ethnic minority professionals related to our major occupations.

We are going to use these networks to advertise the new positions. We are going to increase our attendance at job fairs. And I think that along with that is an increased emphasis on our part as to the challenge that people coming to the SEC have today, in terms of what you were talking about earlier--the challenge to step in at this time and help restore some confidence and faith in our system.

Mr. Serrano. Well, I thank you for that answer. And I would hope that there continues to be an effort on the part of the commission to make sure that that diversity keeps growing.

You know, I am one of those folks who soundly oppose any intervention in Iraq. But, the one thing that will be clear if we get involved in a war, is the diversity of our troops. And I think it is only fair and important that as those folks come home, America continues to try to diversify in every area. So it is not just in fighting wars, but it is in having jobs for the future and, in all honestly, also having every so often the keys to the executive washroom, which is not a bad thing to have.

GAO'S RECOMMENDATION ON AUTOMATION REVIEW POLICY

In February, the GAO issued a report recommending additional actions to better prepare financial markets for possible terrorist attacks. The report praises the SEC's efforts to work with trading markets and other participants. I note with pride that GAO also commends various New York City agencies, including the Department of Information Technology and Telecommunications, for leading restoration-of-services efforts.

I would like to ask you about GAO's recommendation regarding the Commission's automation review policy.

To oversee an expanded automation review policy, as recommended, would require dedicating resources to hire consultants with expertise in this highly specialized area and to conduct more frequent and more thorough examinations

What are your plans in this particular area?

Mr. Donaldson. Well, to begin with, we agree with the GAO's recognition of the importance of our automation review policy program. And, as you know, that oversees the trading and information dissemination systems that are supporting our markets.

Right now, we are assessing whether rule making is appropriate in this area to promote greater industry responsiveness to ARP recommendations. In addition, subject to the availability of funding, we may consider expanding the level of staffing and resources committed to the ARP program.

That comes really as a direct result of the Commission's experience during the 1987 market break, as well as in November of 1989, and we are very, very conscious of the need to move ahead here. And as I say, we are examining whether we need additional rule-making capabilities in order to accelerate attention to this problem.

Mr. Serrano. And when do you think you will know whether you do or not?

Mr. Donaldson. Well, as a matter of fact, I held a conference with some of the people involved with this my first week in office, asking what we were doing in this area. I am aware of, as a result of having lived in New York and having seen the press--well, first of all, having experienced 9/11; but secondarily, having seen the press reports on the movement of security processing and trading facilities and backup facilities and the need for that. I am very conscious of the fact that we have got to move ahead on these mandates, if you will.

So I would say that it is a top priority for us.

Mr. Serrano. Mr. Chairman, I just have one question herebefore we move on to Mr. Taylor.

Did we ever find out, Mr. Donaldson, how much physical documents, having to do with stocks and/or gold, or any other form of currency or exchange, was lost in the World Trade Center?

I had heard, for instance, that there was about 180-something million dollars in gold--I do not know what gold would be doing somewhere at the World Trade Center--that just went, unfortunately, the way the artwork went.

And, then, I imagine that in vaults in there must have been large amounts of stock certificates that were totally, Mr. Chairman, just destroyed.

Do we have any idea how much that was? I guess everything is computerized, so people were able to recover everything--possibly not the gold.

Mr. Donaldson. I do not personally know any more than you do. I hear, anecdotally, there was tremendous damage, particularly in terms of the gold, and to some of the banks that--were in the towers.

Mr. Serrano. So there was gold in there?

Mr. Donaldson. I believe there was, yes. And I am not sure that the gold was lost, I just do not have the numbers on that.

Mr. Serrano. Does it melt?

Mr. Donaldson. I just do not have that. If we have that, I will get it for you. If we have a number on that, we will report back to you.

But I think that, as part of our information technology makeover if you will, we are very conscious through our own experience--as you know, the SEC's office was badly damaged during 9/11. We are very conscious of the impact that that sort of a disaster can have on records, and we are moving to a record retention policy and information technology that will

safeguard those kinds of records. So we learned a little bit ourselves on 9/11.

RESTORATION OF THE FINANCIAL COMMUNITY

Mr. Serrano. And one last related question. Is the physical aspect of the stock exchange fully operational to your satisfaction? I mean, I know it is working, but is everything physically in place that was lost related to it in other buildings, other than the exchange itself?

And where did most of--and I am not asking you for all the offices that were at the World Trade Center, but the offices related to the stock market and to the financial community--do you know where most of those offices went?

Because I know they did not run across the river to New Jersey, to my knowledge.

Mr. Donaldson. Yes. I was not Chairman of the stock exchange at the time, so I was not directly involved. But the problem on 9/11 was that the damage that was done happened to hit a major switching station for Verizon. In other words, it was just bad luck that the communications for that whole area of Manhattan were almost directly hit by the disaster.

An amazing job was done in getting the system back up, truly amazing. A lot of it was underwater. Communications between the Stock Exchange and those systems was repaired with amazing rapidity.

The problem was that the damage from 9/11 hit several of the major brokerage firms, who were in the area also, and they had to transfer their communications to remote location in New Jersey and elsewhere, and it took them time to get settled in the new locations before the Stock Exchange could truly open.

In other words, the Stock Exchange was ready to do business on the Friday of the weekend after 9/11, but you cannot do business unless you are in communication with the firms that are bringing the business to the floor.

Mr. Serrano. Sir, I was, on 9/11, Mr. Chairman, I was in New York that day. I was not here in the House. The only thing that worked was the blackberry. And the reason I was in New York, it was election day, primary day, and I often wonder, just as an aside, and no one has written that the fact that the attack took place on an election day, and elections were canceled halfway through, you know, 11:00 a.m. And if you want to hit a democracy, Mr. Chairman, I guess the best thing you could do is interrupt election day, because that is a statement no one--maybe it was a coincidence, or maybe they knew that that was a good symbol.

Thank you, sir.

Mr. Wolf. Mr. Taylor.

Mr. Taylor. Thank you, Mr. Chairman.

Mr. Wolf. I want to say welcome to the Committee, welcome, and to Mr. Taylor.

Mr. Taylor. Thank you, I have only been a member of this for 10 years, but thank you, I appreciate that. Mr. Serrano, I certainly shared your support for Governor Rockefeller, and that is why I headed his campaign in North Carolina, because of his support for diversity.

Now, he wanted an Hispanic registered Republican--and he

wanted everybody to go to heaven, but alas, what can I say?
[Laughter.]

Mr. Serrano. And he owns a house in Puerto Rico, I want you to know. Plus, he owns a house in every state, I think, but----
[Laughter.]

ANTICIPATING PROBLEMS IN THE FINANCIAL COMMUNITY

Mr. Taylor. Mr. Chairman, you know, my philosophy remains that the Government will mess up a one-car funeral. I know we have problems, but the last thing I want to do is to turn the government loose in an effort to solve the problems in business.

We know that, I think, there were two reasons the ``anything goes'' administration that we had existed. You know, of course, while we were arguing over what those were, a lot of business people took that to mean that they could do most anything.

I share your indignation about the industry's leaders, who forgot their corporate responsibility and their ethics in trying to push ahead for money. I also believe the second reason was that we did need more funding in areas to be able to detect wrongdoing and to move quickly.

Fifty percent of our public has stocks now. The average individual is very concerned about problems that might be most obviously considered. I mean, I am not talking about integrate details; just a pump-and-dump, for instance, is not something that you would have to look very far about.

Will the money you are getting help you move faster to notify, or at least question, the market regarding those obvious problems?

Mr. Donaldson. Well, I think the money will help us in a number of ways. First of all, the actual expertise that comes, the additional troops, if you will, that we can pour into this battle--if I may use that analogy--will help us with the backlog that we have of unexamined entities.

There are about 11,000 public companies in the United States and many of them are very large companies. They report through the various reporting mandates--you know, thick piles of paper and so forth--and we just need this manpower to get at that.

We also need the technology that our information technology program is going to bring us so that we can work more efficiently. With the correct technology, we can reduce that tremendous paperwork, paper load, to images and storage capabilities in ability to scan.

And I think it will allow us to increase the efficiency of our legal and accounting staff.

Mr. Taylor. Would that help you--and not only historically speaking--put together a case, a case that could take a couple of years, but would perhaps give some warning in the market before the horse is out of the barn?

That is the only thing that will possibly save the half of the American public that own stock: To try to catch a void, to do what we can before a crisis actually occurs. I know our record of prosecution is good, but will that technology program and staffing increases enable you to move faster and perhaps

anticipate major problems?

Mr. Donaldson. Well, I think it will. And I think it will help in a way I alluded to before, the organizing of our human resources so that we are not only processing and analyzing hopefully in a more efficient way existing infractions but that we are also able to organize ourselves in such a way that we can anticipate what might happen in the future.

There are a number of areas that one needs, I believe, to do more work, and not just ourselves, but the whole government, in terms of where the risks are now in the financial system we have, and to see if we cannot anticipate some of the problems that may be coming down the pike.

Mr. Taylor. Well, I share your feelings in that area. I have followed your career with great interest and appreciate having a man such as you head the SEC now. As the chairman has said, I too stand ready to work with you.

Chairman, I will yield back.

Mr. Wolf. Mr. Kirk.

Mr. Kirk. Thank you. I asked about the Administration's view on the public and political--and what it would do for SEC jurisdiction. I understand the department is reaffirming the Administration's position----

Mr. Donaldson. Well, as you know, the SEC has been on the record for a long time and wanting to get out from being responsible for the public operations. And----

Mr. Kirk. Here is my question: Does that preempt what we--

Mr. Donaldson. I think it will. I think it will give us more flexibility to use those resources in other areas.

CODE OF ETHICS FOR VENTURE CAPITAL

Mr. Kirk. That is good news. On venture capital with regard to code of ethics: We do not have any national code or--several people have been talking about regional codes. Do you have a view of the policy?

Mr. Donaldson. A code of ethics?

Mr. Kirk. Right.

Mr. Donaldson. For venture capital?

Mr. Kirk. That is right. I would just say in the different cultures in the midwest it can be very strong in favor of that. But we are getting some resistance elsewhere.

Mr. Donaldson. Well, I think we--insofar as we have been through the dot com era and seen the results of over-investment, too much venture money going into something that is nothing more than an idea and with very little substance to it.

I think there is a heightened awareness of the need for responsibility on the part of venture capitalists in terms of how they employ other people's money. My instinct is that there are a number of venture-capital associations and so forth who have addressed that issue. I do not believe we as an agency have.

Mr. Kirk. I do not want--I am very concerned there would be somehow outlawed risk by over-aggressing the force with across the board. That is in this country. On the other hand, some encouragement by the Commission might help. I guess obviously we have gone through above all in this area as well.

Mr. Donaldson. Well, clearly the burdens of regulation fall heavily on newer companies who do not have the staff and capabilities to handle regulation or oversight. So it is a problem.

I think that falls more heavily on smaller companies. And I think it is an overall problem in terms of just attempting to regulate in a way that is effective and cost-effective and does not deter entrepreneurship.

Mr. Kirk. Well, and also how do you bring up the children so that they are behaving well by the time they go into your full scrutiny?

What is the time line for you on options and broker money?

ACCOUNTING FOR STOCK OPTIONS

Mr. Donaldson. On options, the Financial Accounting Standards Board announced just yesterday, I guess, that it was on their agenda to come up with a firm recommendation on the expensing of options. I think there is general agreement.

I think there is general agreement that there is a cost to options, and that it has not yet been reflected properly. And the second part of that is how do you reflect it?

Mr. Kirk. In your old job, who led the way?

Mr. Donaldson. Frankly, I look forward to the accounting expertise being brought to bear on this problem. I have yet to see the formula that I think is the right formula. And I hope people with more expertise than I have, who are spending a lot of time on it, are going to come up with something that can be universally accepted and applied.

But as far as I am concerned, the need to reflect the cost of options and current operations is very important to me.

Mr. Kirk. Annual meetings next year--you think you would want to---

Mr. Donaldson. Well, just as soon as the FASB gets done with its work, and there is work going on elsewhere in the world, and just as soon as we get a formula that they propose.

You know, we were moved to implement it, we just do not have that formula.

SEC'S INFORMATION TECHNOLOGY PROGRAM

Mr. Kirk. Your testimony focused on the information systems. Can you give us, the Committee, your vision of what it looks like?

Mr. Donaldson. Sure. I have somewhere in my papers here a description of the overall information-technology program that we have under way or are soon to have under way.

First is a document-imaging program. In 2003, the SEC will pilot a system that provides for the electronic capture, search and retrieval in the area of filing and disclosure of processing.

In 2003, we will conduct an extensive review of our filing disclosure processing, with particular emphasis on the filing of financial data. We plan to examine ways to restructure the filing, to eliminate redundant data.

In 2004, we will make business process changes, eliminating selected forms and consolidate and streamline data required for files. That is an elongated way of saying that we are going to

look at the whole filing and disclosure process and attempt to, in layman's terms, redefine it.

And lastly, in the area of disaster recovery, we need the capacity to store and move large amounts of data from one regional district office to another without first bringing it all back to Washington.

Now, when this project is complete, the agency's critical files and information system will be backed up on a daily basis.

Mr. Kirk. Mr. Chairman, I hope--I know the IRS is moving towards the ability of a taxpayer to interact with the digital and the web. And I would hope in time that is where we are going.

Mr. Donaldson. It is a good direction.

Mr. Kirk. Because I think, at this point, this is the first year a taxpayer really can fully interact with the Service in that way.

Thank you very much, Mr. Chairman.

INDEPENDENT ANALYSIS OF IT SYSTEMS

Mr. Wolf. Thank you, Mr. Kirk.

Following up on the question that Mr. Kirk asked, when the FBI was establishing its new technology program, what is called the Trilogy program, they found out what they had put together really was not working well. They had had a lot of good people down at the FBI who were good FBI agents, but they did not have a lot of technology people.

And then Mr. Kirk mentioned the IRS, they had that system before this tax-information system, where they spent, I think, a billion or two billion--I forget the exact amount. And it was a failure.

Have you brought in--not a consultant--what we asked the FBI to do was to go out and hire an expert for assistance, you have not been in government long, but do you know what DARPA is? DARPA is a defense-science-advisory board that looks at technologies and is independent. It has a vested business interests.

It is not the contractor being paid to install the program. I am sure you have good contractors that are doing that. I am sure we have good people that are doing that.

But they--the FBI has now gone outside and they have put together a team of people who have no vested interest of selling something or gaining something. But they are the best in the business with regard to what the FBI is trying to do.

Are you confident--have you done that? Have you vetted your technology projects with an outside group of contractors who are not trying to sell you something, assuming, and I am sure you do, have good contractors assisting your IT program?

But even more importantly, that the technology does precisely what you want it to do? So has it been looked at by a group, like MITRE and DARPA and other groups like that, or has it just been looked at by your internal people?

Mr. Donaldson. Well, you are asking exactly the question that I have been asking. I have only been there for three weeks, not quite a month. Clearly the budget money that has been set aside is a considerable amount of money relative to

the job at hand.

We have, I know, contractors that would give us independent analysis.

Having said that, I am well aware, based on my own past experience, that one can go down a lot of false routes when putting as much new effort into technology as we are, and the technology is changing so rapidly.

So, although we do have contractors in there right now we do have a budget that was based on independent advice. This whole area of information technology is so important to what we are doing that I will attempt to spend a considerable amount of effort reviewing what has been done and making sure, insofar as I can, that, just as you suggest, is that we are getting the best independent advice we can get.

Mr. Wolf. You might talk to Director Mueller, who I think has done a credible job. And let me just say, I second your comment about the New York Stock Exchange getting up and running so quickly after that terrible event on 9/11, and they should be congratulated.

You may want to ask Director Mueller. He has put together, in essence, almost a Team B; but these are people who have no vested interest.

And you might want to call on Director Mueller and see who--how he has done it and who he brought in--and--just to make sure what you are doing is appropriate. So you, one, do not have the cost overruns; but, more importantly, have a system that does what you want it to do.

SELECTING A PCAOB CHAIRMAN

The Accounting Oversight Board, the SEC recently adopted a process for selecting a chairman for the Public Company Accounting Oversight Board. What will this process entail to ensure that a qualified candidate is selected by the Commission?

As you know, that was an issue of controversy in the past--good people, men of integrity.

What process do you have?

Mr. Donaldson. Well, clearly, I think, you are all aware of the process, which the GAO examined after the fact and judged a flawed process.

Mr. Wolf. And, excuse me, this is your appointment, correct? You sold it----

Mr. Donaldson. Yes, it is the Commission's, my fellow Commissioners and my appointment. And it is a very, very important appointment, and because of the delay that has taken place all over, the Board is up and going and has a very competent Acting Chairman. We must move swiftly to put a permanent Chairman in place.

We announced a process two weeks ago, agreed to by all the Commissioners in general terms. We have taken some time deadlines. We are out right now, ending tomorrow, the two-week period, asking for nominations from anybody and everybody that wants to nominate somebody. Plus, we had a proactive program of talking to business and financial and academic leaders, trying to seek their recommendations.

We will close that process down tomorrow. We will add those

names to a list that existed from a prior search process, so we have a big list of very good names, and some not so good, but basically a wonderful list to shop from. And then we will proceed very rapidly to winnow that list down to what I hope will be a very limited number of potential candidates.

When we get it down to a limited number of potential candidates, we will begin the vetting process. There is a presumption here that you simply have to identify the best person in the world and go out and you can hire them like that.

This is not usually the way it works. Usually the way it works, the person that we want to get is probably very happy where he or she is, and we are going to have to convince them that this is a time to come perform a public service.

And that is a process that, for anybody that has been in the search business and I suspect we all have one way or another, it is hard to put a time frame on that.

Mr. Wolf. Do you recall when you would like to have a person on the job?

Mr. Donaldson. Yesterday, frankly. It is a top priority. We have a process. We have a process that all the commissioners have bought into.

We have organized the Commission as a search committee, if you will. I am chairing that search committee, and we have staffed it, and I would hope that--I would hate to put an actual time frame on it, but we are going to do it just as quick as we can.

OVERSIGHT OF PCAOB SPENDING

Mr. Wolf. How will the SEC ensure the new board has sufficient resources to perform its mission, and the board's fee and spending authorities are exercised in a manner that is reasonable and transparent?

Mr. Donaldson. Well, we have the oversight responsibility for the Board. We have lent them start-up money, the first tranche of which we gave them several months ago. They have a request in right now for a second tranche of money from us; I think \$17 million, roughly. And we are in the process of vetting that; that \$17 million is particularly important because it will enable them to begin to develop the systems that they need not only to register the accounting firms and corporations, but also to start raising their own money.

In other words, they are to be supported ultimately by fees against companies and accounting firms, and they need a system to bill for those fees.

We hope that by the end of this fiscal year the Board will be up and going and collecting its fees and pay us back the money that we lent them, and they will be off to the races.

PCAOB BOARD MEMBERS' SALARIES

Mr. Wolf. This is perhaps a controversial issue, and I will just throw it, out there to get your comments on it. If you feel--or if you really do not want to comment on it, you don't have to. But I think it would be good for you to know that there is a concern, and you might want to comment.

A letter was sent by the Committee to the Chairman Pitt,

concerning the proposed \$452,000 annual salary for accounting board members and the proposed \$560,000 annual salary for the board's chair.

I have placed a telephone call during the time that we were marking up the FY03 bill to express a bit of concern. There were some Members that asked this Committee, ``Interfere and cap the salary, or do something.'' And I thought the appropriate thing was not to do that. I think the Sarbanes-Oxley bill sets it up.

My own sense is, you are taking a pay cut, or you could be out serving on the board, golfing down in Naples and taking your boat out, and, I mean, you really could.

Service, it is called public service. I do not think you ought to put a salary on it that makes it difficult for a person to live. At that time, the analogy in an article in one of the papers compared what the president of the United States made and what the chairman of the board made. Most of the people that are going to be on the board are fairly wealthy people.

I think this is an opportunity to serve--as Mr. Serrano made the comment about the young men and women that are in the Gulf today serving--many at a very difficult price, because they are in the private sector, and their salary will not meet----

There is a story on the news today, and I saw it on NBC the other night of a major in the Marine Corps whose son needed a heart transplant. And he left, and he is leading his men over in the Gulf and thank the good Lord that last night they found a heart for the transplantation and we thank--we just pray that it works out.

Somehow, I think the salary is going to be a little bit too high. Now, we are not going to get involved. I mean, they are going to have to live with this. How much money can you spend, at a certain point in life?

But--and you do not even have to comment, I think the level, speaking for myself now, of \$520,000--\$560,000 for the board's chair is too high----

Mr. Donaldson. Well, let me----

Mr. Wolf [continuing]. and I understand, I have gone back, and I have read the law, and that may very well be in compliance with the law. But what triggered this--and I was not sure if you were going to ask the question--but you said they got the first tranche, and now we are ready to give them \$17 million of the next--I said, ``It is. This is taxpayer dollars.''

And I think perception ought to match authenticity, means the perception and the reality go together, and I think at some time, I think people will think that this is too high.

But if you want to comment.

Mr. Donaldson. Let me just comment, because I think it has been a subject of controversy.

The intent as I understand it, of the Sarbanes-Oxley legislation was to create, in effect, a non-government agency a private corporation under a government mandate--and to give it the flexibility to pay salaries comparable to those paid people who are doing comparable work in the private sector.

And it is my understanding that the salary levels that were

arrived at were arrived at based on the salaries being paid in the private sector for a similar type of work--FASB and other nongovernment but nonprofit organizations.

I think one point I would make is that it really is not the taxpayers' money. The money will come from fees from corporations and accounting firms that will support--it.

Having said that, I think my own personal view is that it gives the entity the freedom to attract people who do have to earn money, professionals who do have to earn money.

And also, they have the flexibility, I believe, to arrive at a salary structure that they want to have. And again, it is going to be up to that board and the chairman of that board to determine on an ongoing basis what the right salary structure is.

I think it is a legitimate subject for determination of that board as to whether the comparability that they have gotten is the right one.

Mr. Wolf. Well, that is true. I have listened to stories like that, where members of Congress tell me that if they were downtown they could make whatever. Well, let them go downtown and make it. Public service--again, this is public service. Corporations are set up by a group of people who get together; they have got a great idea. They get some stockholders, and you know better than I do.

This was set up by an act of Congress, as a result of a crisis of confidence in the system. And so when we are setting up something to deal with a crisis of confidence--and I commend the president for your appointment. You probably could not have a better circumstance. What is your salary, for the record.

Mr. Donaldson. I think it is about \$144,000----

Mr. Wolf. Now, do you think you could have gotten a better job somewhere else [Laughter.]

Mr. Donaldson. I could have tried.

Mr. Wolf. But you were called.

Mr. Donaldson. Your point is----

Mr. Donaldson. --Well taken.

Mr. Wolf. And I think the salary--let the record show, I speak only for myself--just is too high. And looking at the background of some of the people that are on there, and yet I am a free enterprise person. I mean, I think, but this is a little bit different than a corporation set up, where this goes before the stockholders and they vote, and there is a board of directors.

This board started on shaky ground. I think they can end up maybe hurting themselves and hurting the very cause by setting salaries so high.

It says, he who humbles himself will be exalted--he who exalts himself will be humbled. A little humility in setting the salaries may help exalt this group to do a good job, which is in the best interest of the entire country.

AGENCY'S ATTRITION RATE

On the pay parity, what is the SEC's attrition rate now? Where is the economy attrition level?

Because that was a crisis last year before we funded pay parity.

Is it where it was or is it better or worse?

Mr. Donaldson. It has been in a relatively short period of time, but already we are beginning to see the effects of pay parity on our retention.

Mr. Wolf. Do you think that is because of pay parity, or do you think it is because of pay parity and the economy?

How do you think it would be if this economy were booming like it was in 1999; would you definitely need pay parity? I have been a strong supporter of good salaries for Federal employees.

But I wonder, if the attrition rate is down, do you think it is from pay parity or more from the economy or a little bit of both?

Mr. Donaldson. I do not know for a fact, but I suspect it is a little bit of both. But I think that the psychological effects of pay parity are considerable. I think the morale effect of pay parity is considerable. And, as I say, I think you are seeing it.

Yes, since the SEC implemented pay parity program in late August, our retention rates, or rather our loss rates, if you will, are: in attorneys, we were losing 4.7 percent, and now we are down to 3.54 Accountants; 3.5 prior, 2 after; 4.28 prior, 2.87 after. So there is a substantial reduction in people leaving the agency.

Mr. Wolf. I have some other questions, but let me just recognize Mr. Serrano and Mr. Taylor.

GLOBALIZATION OF SECURITIES MARKETS

Mr. Serrano. Thank you so much, Mr. Chairman.

You know, I was thinking while you were discussing the salary issue, and you and I are equal in that sense that we want people to make whatever they can make. But I represent Yankee Stadium and some of those guys sitting on the bench there are making about \$2 million a year. And I had a better year than they had last year. And it did not help me in any way, shape, or form.

Let me ask you a question. There is a lot of talk about the fact that the securities industry is quickly becoming a global market. If you look at the growth in the number of U.S. investors holding foreign stock and the number of foreign issuers registering in our markets, would you please describe the new trends and cross-border trading and any new challenges these raise for the commission.

I guess some people would be concerned about who is now investing in our markets, and what markets we may be not knowingly investing in.

So how do we keep an eye on, for instance, where does Osama have his money invested?

Mr. Donaldson. Well, you bring up a subject that is at the forefront of, in my view, some of the challenges that we face and that is the globalization of our securities markets. I may be a little wrong on these figures, but two-thirds of the world's GNP is coming from outside the United States now. And only a third coming from inside the United States. And, yet, U.S. portfolios are heavily weighted to investing in U.S. stocks.

And that trend has been going up. In fact, 10 years ago probably, 3 percent of a portfolio, a typical portfolio, was in foreign stocks, and that is up probably now to 15 percent. And if it matched where earnings were coming from, you could conceive of U.S. investors placing two-thirds of their equity ownership being outside the United States.

So there is a demand for foreign securities and, clearly, we have to give U.S. investors the same kind of protections that they have on U.S. securities making sure that they are following our rules and regulations

So that is a challenge number 1.

No. 2 is that, as evidenced by certain parts of the Sarbanes-Oxley Act, as we move to increase the regulation of and the corporate governance aspects of our companies, and as we try to extend that to foreign companies listed here, we run head-on into laws in other countries causing great pain to foreign companies in trying to conform with our laws.

The most obvious example is the requirement now that no member of management can be on the audit committee where in Germany, by law, management or labor must be represented on the audit committee. So there is a real trap, a real conflict.

And I think trying to straighten this out with foreign issuers and trying to reach a compromise that protects our investors is a real challenge for us.

And then, lastly, the markets themselves. Insofar as we have other stock markets, stock exchanges, and so forth, in other parts of the world we have the problem of trying to coordinate global trading, if you will--trying to make sure, that, let's say, the purchase of U.S. securities in foreign markets has the same protections that they are accorded here in the United States.

And I consider this to be one of the great challenges we face now under the general rubric of market structure. How do we get onto a global basis and try to get some comparability in markets throughout the world?

Mr. Serrano. Okay, but no sense on where Osama has his money invested, right? I understand the gentleman is very wealthy, right?

Mr. Donaldson. I am sorry, I did not get that.

Mr. Serrano. I said where Osama bin Laden may have his money invested.

Mr. Donaldson. Oh, yes. . . .

Mr. Serrano. Because we do understand that he is a very wealth fellow, right?

Mr. Donaldson. We cannot find him, and I guess we cannot find his money, although, from what I read, we are finding some of the people who may have been involved in transporting his money around.

LISTING OF FOREIGN COMPANIES

Mr. Serrano. Foreign auditors are required to register with the new Public Company Accounting Oversight Board and agree to their oversight in order to certify that both the companies are trading on the U.S. stock markets.

In the nineties, when you were at the New York Stock Exchange, you proposed to list foreign companies on the

exchange, even if they followed different accounting standards than U.S. companies. Have you changed your view? If not, will you try to overturn the Public Company Accounting Oversight Board's decision?

Mr. Donaldson. Well, frankly, there has been . . . you know, during the period of my nomination and confirmation, there were some reports in the press, which I think were misleading as to my position while at the stock exchange on the issue of listing of foreign companies. And this is a little bit of a repeat of what I have just said a moment ago. But because I felt, and we, the New York Stock Exchange, felt that there was going to be an increased demand for foreign investing, we said we must do something about this because now--and this was 10 years ago--those in the U.S. who want to invest in foreign companies must go through three or four intermediaries to get to a foreign market and pay commissions and levels of charges and so forth and then buy a security in a foreign market where they had none of the protections we have here.

So we said, somehow, we have got to get foreign companies to be able to list on our exchange so that we could give U.S. investors the protections--in that case, the protections of the New York Stock exchange.

So our thrust was to try and push for some common accounting practices. In other words, we said, can we somehow come up with accounting that has investor protections in it but may not be pure U.S. accounting, maybe some amalgamation of our accounting and other countries' accounting?

As things have turned out . . . Years ago, I spent a lot of time trying to convince and talk to investors who said they thought their accounting was better than ours, and I said I did not think it was. As things have turned out, we discovered that there are imperfections in our accounting as well as imperfections in international accounting.

So we are all moving now, I think, at a much more rapid rate toward an international accounting standard, and we cannot get there too fast, as far as I am concerned. But I think the issue here is investor protection and assuring that no matter where the company is domiciled that the U.S. investor is going to buy it, we want that U.S. investor to have the protections that the SEC and IRS have always given

Mr. Serrano. So, some people still think that their accounting system is better than ours.

Mr. Donaldson. Yes, I think they do, and I think the real answer here is some combination would be best. I mean, I think that, again, there are a number of different philosophical approaches to accounting, and some of those approaches are based on cultural differences

In other words, in a country like Germany, let's say, where so many of the corporate entities are owned by the banks, the banks are true, long-term investors, they own companies forever.

That is changing a little bit now, but the concern there is an accounting system that protects the lenders to the company, and is less concerned with equity owners, as opposed to in this country where we have this broad base of equity owners, and the concern is with accounting that reflects earnings per share as correctly as it can be.

So there is a cultural difference, but that is beginning to break down now.

Mr. Serrano. Mr. Chairman, as we strive to reach truth in teaching, I can see teachers in the future at the grade school level saying, ``Two and two is four, until you get into the financial markets, and then it may not always be four.''

I have no further questions, Mr. Chairman, I just want to thank Mr. Donaldson for coming before us today. We stand ready to join the Chairman to support you in any way that we can, and just take care of the Woolworth Building.

You know, when I was 18 years old, I worked for Manufacturer's Hanover Trust, actually when I was 17, and in those days if you wanted a promotion, Mr. Taylor, you had to go to the American Institute of Banking.

Otherwise you would have stayed with a \$55-a-week salary forever. So I made the big dip and three times a week I would take the Number 6 subway to, same one Jennifer Lopez took on her CD----

[Laughter.]

Not with the same success, but I traveled on the 6 before she was born. But, to AIB, and the Woolworth Building is a wonderful building which has a very historic significance, and please make good use of it. Thank you.

Mr. Wolf. Thank you, Mr. Serrano.

Mr. Taylor.

ASSISTANCE TO DEVELOPING COUNTRIES

Mr. Taylor. Thank you, Mr. Chairman. Not all of our committees have such a learned individual in foreign affairs as yourself, and I agreed with what you were saying earlier.

When we look at what is happening around the globe--and some of our American companies are participating in that--we should be more concerned. We also, in Eastern Europe, we have changed a good deal, and we have capitalistic aspirations there.

We had GAO, for instance, send advisers to Russia for the premiers, in an effort to start a type of accounting process. The former Premier of Russia is now the chairman of a committee that tries to bring truthful accounting into Russia's government and businesses.

We also have a program called Open World, operated through the Library of Congress, through which we try to invite businessmen for an exchange. The latest effort was an exchange program for judges, to try to work with their courtsystem, which is very necessary.

Russia's industry includes 16 percent small business, and that is very important, I think, for developing a middle class in a democracy. What can we do, what can your agency do, to encourage them? I realize prolific crime still exists in the Russian business world and we are not talking about running their markets, we are talking about what your agency might do to advise or work with them. It is very much in the free world's interest to have a capitalistic country that is democratic, if not an exact model of the United States, to have a democracy that will be global in being able to deal with capitalism.

Is there anything that you have in mind, as far as it would be possible, in offering some advice in working with companies in Russia, and perhaps in some of the Eastern European countries? I do not think China's government is ready to accept that type of advice, but a lot of Eastern Europe and Russia, I think, would be.

Mr. Donaldson. Well, prior to my coming into this job I was an adviser to a thing called the Foreign Financial Service Corporation, which was established by Paul Volcker and John Whitehead and a number of distinguished Americans, with a view toward exactly what you are talking about, to providing American expertise to some of the developing countries, and in this case, particularly in Russia and Eastern European companies. And, actually, a number of SEC volunteers have taken part in missions to Russia to help them back when the whole thing was when the wall came down and everybody was getting into it to help them.

And I think we have done the same thing in other Eastern European countries. We have, as you know better than I, one of the greatest assets in the world this country has is our markets, the way they function, our ability to export that is a very important thing.

We also have programs that invite foreign regulators to come to the SEC and observe what we are doing, and that includes Russia and eastern Europe. So we are very sympathetic to the thrust of what you are saying, and I hope that we can encourage more of our staff to take some time, be a volunteer and help.

Mr. Taylor. I know some of their oil companies are listing on the American Exchange. LUKOIL, I think, bought Getty's assets, and I imagine they are the largest oil company.

Are we working with those that want to come on the market in any different ways; or, are they just sort of hiring counsel and going to it?

Mr. Donaldson. Well, I think that--these markets are maturing. I think the Russian markets, although I am not as close to it as I was, are a lot better today than they were five years ago or 10 years ago--but it takes a while. You know, I think back on what our markets were like in this country back around 1900 or so, and we went through a period that resulted in the formation of the SEC and the '33 and '34 Acts, and in many ways these countries, like Russia and some of the Eastern European countries, have to go through that process themselves, and they are. And Russia has been through at least one stage of that now and seems to be coming out the other end, the better for it.

Mr. Taylor. I agree. They missed the 20th century in large part, not only because of our wanting to see them first develop into a capitalistic market, but also because the commodity of oil is very important to the whole world. Having a modern source and a trading apparatus for the companies to do that is crucial. I think it is very important to use to encourage Russia, especially with what may now be the limited source we have in the Middle East. I think our dependence on the Middle East is a problem.

Thank you very much.

DEVELOPING FOREIGN SECURITIES MARKETS

Mr. Donaldson. Sitting behind me, Alan Beller, who is head of our Corporate Finance Division, just slipped me a note and said we invite potential issuers, such as those mentioned, to meet with Corporate Finance at their request.

Mr. Taylor. Well, we appreciate that. There is a dearth of capital in Russia, and if you are going to encourage a capitalistic system that will have to be improved. Granted, it is not our primary responsibility, it is the Russians' responsibility. However, we could advise them and try to weigh that relationship as much as possible, because we would like to see them move forward as quickly as possible.

You are not going to have a capitalistic system of any size until you get it the capital, and less than 1 percent of the world's investible funds, for obvious reasons, are invested in Russia. If we can improve that, I think it will obviously be a boon for the United States and for the rest of the world.

Thank you, Mr. Chairman. I appreciate it.

Mr. Wolf. Thank you.

I agree with Mr. Taylor. You may want to have a formal program, I mean, in all of the Balkans and the Eastern European countries, because I know of no two democracies today that are at war with each other. And when a country becomes a democracy and has a capitalistic system, they generally settle their differences in different ways. And I know Romania just got into NATO, and when you look at that country, it looks great. They are supporting us in overflights, but there is a high level of corruption in Romania and is difficult for a business to operate there--bribes and different things like that.

Now, I think Mr. Taylor has a good idea. You may want to have, particularly for the newly-formed countries, including the Soviet Union or Former Soviet--Russia, but the countries that have gotten into NATO to have some systematic program, whereby they are invited over on a yearly basis to spend a couple weeks at the SEC--only by seeing, particularly if you have a man who has lived in a different system for years and years, maybe age 50, and all of a sudden he is thrown into capitalism--it is hard to think differently.

And then you bring them over here; he sees what you are doing; he sees how we are doing it. And that can be as important as sending a division over there, if you will. If you can submit for the record, too, the retention figures that you recited, we would appreciate it.

I have some other formal questions, but you struck my thought when you mentioned China. One, do other countries have an SEC, like the developing countries? Do the Eastern European countries have an SEC? Does China have an SEC?

Mr. Donaldson. Yes, is the answer. China does. I met with them even before I was in this job. Back when I was Chairman of the New York Stock Exchange, I traveled to China and met with their securities regulators. I also did so in the private sector shortly thereafter. They are trying very hard to emulate what we have.

Mr. Wolf. What about other developing countries? Where does it kind of cut off?

Mr. Donaldson. Well, clearly securities regulation is

probably the most sophisticated elsewhere, I would say, in London.

Mr. Wolf. Well, I know this. But I mean, I would assume that--but like in Slovenia, Romania, Bosnia-Herzegovina. Do they have SECs?

Mr. Donaldson. They have one form or another of securities regulations; some coming out of the finance division of the-- you know, not independent, but out of the finance----

Mr. Wolf. Department of Treasury, finance ministry?

Mr. Donaldson. Yes. Most of the countries that have exchanges have some sort of an overseer of the exchanges. As a matter of fact, in China, Premier Zhu Rongji made a big effort to elevate the comparable entity in China to SEC-like status, because when you have such unique problems as they privatize their companies, you know, and take them from being government-owned to an independent stage now that are publicly owned.

That is a real problem still. And they need an overseer.

DISCLOSING BUSINESS LINKS TO REPRESSIVE REGIMES

Mr. Wolf. Last year, the SEC made improvements to require additional disclosure from foreign companies listing on U.S. security markets. In November, Talisman Energy, a Canadian corporation listed on U.S. security market, sold its interest in Sudan. Are there any other steps that you could take?

There was a news report, which I have, and I am going to read only part of it and not mention the companies. But New York City Comptroller William Thompson, on behalf of the New York City Police and Fire Department Pension Fund, has submitted shareholder resolutions concerning three U.S. companies and possible business links with governments that support terrorism.

The resolution asks shareholders to establish a board of directors committed to review corporation operations and their link to terrorism sponsors. You know, the New York City policemen and firemen who--you can see how strongly they would feel.

These are companies that are doing business in, for instance, in Iran or have a subsidiary that is working with a subsidiary in Iraq.

My sense is, one of the reasons the French are being so obstinate with regard to Iraq is they have extensive investments in Iraq. They have built things in Iraq. It is a business thing as much as it is anything else.

But, do you have anything planned? I mean, we were talking about human rights, which, obviously, is important. But, shifting over with regard to terrorism, knowing how hard this country was hit on September 11th, have you looked at that, do you have any plans?

And I can--I do not want to embarrass the companies, because it may not be true. Or then again, it may be. I do not know. But I do not think I should put it in the record. But we will share with you the stories and the press releases and everything, and one was in Barron's I think.

But do you have any thoughts with regard to providing disclosures with regard to American companies or companies that are involved with countries who support terrorism?

Mr. Donaldson. Again, I am a new boy in town in terms of what has been done. Clearly, in the case of Iran and Iraq, you know, there are legislative inhibitions on selling certain products to those countries.

I sit on a President's Council which has the Chairman of the SEC, the Secretary of the Treasury, the Chairman of the Federal Reserve and the chairman of the CFTC. And we meet on a regular basis, and these are issues that, I am sure, have come up and will come up, in terms of the overall U.S. regulatory mechanism, vis a vis the kind of issues that you bring up.

Mr. Wolf. Obviously, you are brand-new, but for years, Osama bin Laden controlled the gum-arabic trade coming out of Sudan. And we could not get the Treasury Department, under the Clinton Administration, to deal with this issue.

Gum arabic, I almost interceded, but I did not when Mr. Serrano asks where does Osama bin Laden have his investments? He has it in construction, he has it in conflict diamonds-- there are diamonds coming out of Sierra Leone and out of those places that they are using to fund Hamas, Hezbollah and Osama bin Laden. He has it heavily into tea, and he has it heavy, heavy, heavy into gum arabic.

And the Treasury Department would not stop gum arabic coming in because they did not know if there was another source. It is used for newspapers, and different things.

And very or very little reluctance, and Treasury would call up and say, ``Well, you know, you know, we understand, but this is important to this one industry, and''--kind of like a blindness.

But we could not get Treasury and others to act--they just would of look the other way. Now, I guess the question is, how aggressive do you think the SEC should be with regards not to stopping, but disclosing, particularly for New York firemen and policemen, who have funds invested in some companies? And this may not be accurate.

Mr. Donaldson. Well, speaking strictly for the SEC, we do pay particular attention to the disclosure aspects, the necessity for material disclosure of companies doing business with governments of countries that are subject to U.S. sanctions

So, as to just us, looking at that, we will insist that there is a disclosure.

Now, beyond what we can do, there are other opportunities. You say there is some frustration at Treasury. I do not know why, but certainly with the subjects you bring up, this may require the legal authority of different parts of our government to do something about it.

DEFINITION OF MATERIALITY

Mr. Wolf. I have been told and understand that corporations must disclose material dealings with governments that support terrorism.

However, what is the definition of material? Shouldn't it be any dealing a corporation has with terrorist sponsor to be disclosed? For example, if an American investor is aware of even a minor dealing a corporation may have with one of these countries, this could have a significant impact on investors'

decisions. It could have a significant impact on a corporation's stock values.

So what is the threshold? Your people sitting behind you would know material. Is it material now you have to disclose.

Mr. Donaldson. There are different definitions of materiality.

Mr. Wolf. All right, well, a big company, a \$10 million deal may not be material. But for another company, it could be.

And secondly, even though it is a huge company like X, for that sale, the sale of the Bulgarians that gave the Russians, the Soviets the quiet propeller technology was only in the range of a couple million dollars. It really was not material, but it was significant in so far.

So I would like to ask you for the definition. And we do not have to take the full Committee's time. I think the definition should be any dealing no matter how large or small. The world has changed. We are ready to go into Iraq. Young men and women are risking their lives.

And so what may have been appropriate before 9/11 may need to be reevaluated. And I am trying to ask these questions lightly, because I am not trying to put you down. And also, I am not trying to ask you questions that people in the back who work for the press will get you to say something you did not want to say.

But I would like you to think about this.

A New York City fireman or policeman with a pension fund should be able to say, ``Okay, I will know, we know that--we know--this is a subsidiary that is dealing with and because of what that county has done or could potentially be doing with regard to terrorism. We do not want to put our money there.''

So it is not a prohibition.

So my sense is that it ought to be any. And if you would--you do not have to give me an answer today--but if you could look and tell us that you are willing to change it to any, I think that would be----

Mr. Donaldson. I get your point, and we will look at materiality. Obviously, our rules and regulations are such that, we have inhibitions on what we can do legally.

Mr. Wolf. We can put an amendment in the bill and change it, I think the less involvement the Congress has in telling the markets what to do, the better. I agree with Mr. Taylor.

I think it is better to have those things come out of the SEC.

So I think changing it from--going from material dealing to any dealing would be appropriate--and it is purely a disclosure because you could then do whatever you want to do but at least you would know that that was the case.

TELECOMMUTING

The last issue so we do not keep you through the series of votes, is to the telecommuting issue. Where do you live--do not tell me the location--but where do you live roughly in Washington now that you are here

Mr. Donaldson. Right now I am a temporary resident.

Mr. Wolf. Yes, I know, but where do you plan on driving from in the morning when you wake up at 6 o'clock and have your

oatmeal? Where will you be driving to when you come to the SEC

Mr. Donaldson. Through downtown Washington, D.C.

Mr. Wolf. Well, you know our traffic is grim.

And since 9/11, it is even more so. And we have been a proponent of telecommuting. It is actually the law, but there are no penalties, requiring that a certain percentage of those who are eligible. There is nothing magic about strapping yourself into a metal box and driving 25 miles when maybe you could sit before your laptop at home and be more efficient, not five days a week, maybe only one day every other week, or one day a week.

Also it allows moms and dads to have more control over their own lives. It takes--it is good for--it takes cars off the road, off the Teddy Roosevelt Bridge, the Woodrow Wilson Bridge, the TR Bridge, and everything else

So I do not know how well you are doing on telecommuting. What percentage of your staff telecommutes?

Mr. Donaldson. Yes, I do. In fiscal 2002 we had a total of 90 employees telecommuting.

Mr. Wolf. What percentage is that?

Mr. Donaldson. That was 90 employees out of 3,000, 3,000-odd. After the agency implemented a new telework program in November, 2002, the number of staff participating increased dramatically. Of the 197 employees currently participating in the program, 124 are what we call ad hoc participants, with no set recurrent schedule, 54 have a set schedule, 15 are participating to accommodate temporary medical needs, and four are participating for reasonable accommodation purposes

So, 197 employees----

PERCENTAGE OF SEC TELECOMMUTERS

Mr. Wolf. That is kind of low for the percentage.

Now, obviously, there are some jobs where you cannot telecommute, but if you can you should be able to telecommute.

Mr. Donaldson. Yes, 197 is, you know, not a huge number relative to the entire work force. On the other hand, it has gone from 90 to 197, so it has more than doubled.

Mr. Wolf. Well, that is true, but the law calls for 40 percent right now, 40 percent of those who are eligible. And my sense is that the SEC, that would be a significant number.

Again, I do not think anyone who does not have a job that they can telecommute should be told to telecommute. But if they do, also there is a flex plan, job sharing, leave sharing, there is different things, but since you are doing pay parity in order to attract people, make family-friendly policies, do these things, telecommuting, I think, actually the productivity of people who telecommute is actually in some respects higher than those who are not, because they are very appreciative of having that opportunity, and I would appreciate it, the law was passed here does call for 20 percent, 40 percent, 60 percent, 80 percent, if you could just look and see if there are positions over there that you could get more people to have that ability.

It saves the federal government money--fewer parking spots, fewer desks, fewer telephones, fewer of everything else, so it is efficiency as well as a productivity thing.

With regard to that, I----

Mr. Serrano. Mr. Chairman, I know that it is just an aside, but you said when he gets up at six and he has his oatmeal, it has got to be freedom toast, as you know, according to the new House rules, cannot be French Toast, it has got to be freedom toast.

And I have one question, Mr. Chairman, that I will submit for the record.

Mr. Wolf. Sure. Without question.

Mr. Serrano. Hey, you guys brought it up, not me.

Mr. Wolf. Now, what I was trying to find out is that is how far do you drive? I live out in a place called Vienna, out halfway to Dulles Airport.

I can get to my Winchester, Virginia, office, which is in the beautiful Shenandoah Valley faster most mornings than I can get to my Capitol Hill.

So driving in this region can be very, very tough, and I am sure if you talked to, and this is not New York, where we all come down and get on a subway and getting cabs, we have people who live in real homes outside and drive in, and so it is a little bit----

[Laughter.]

Mr. Serrano. Real homes. [Laughter.]

CONCLUSION

Mr. Wolf. With that, I thank you for your testimony. Thank you.

Mr. Donaldson. Thank you.

Mr. Wolf. The hearing is adjourned.

[GRAPHIC(S) NOT AVAILABLE IN TIFF FORMAT]

W I T N E S S E S

	Page
Donaldson, W. H.....	353
Donnelly, Tony.....	187
Heyburn, Judge J. G., II.....	1
Kennedy, Justice A. M.....	187
Meeham, L. R.....	1
Muris, T. J.....	257
Reyna, B. G.....	100
Rider, Sally.....	187
Suter, Bill.....	187
Talkin, Pamela.....	187
Thomas, Justice Clarence.....	187

I N D E X

	Page
The Federal Judiciary and the United States Marshals Service.....	

Administrative Office.....	81
Alternatives to Detention.....	136
Background Investigations for Judiciary Employees.....	186
Bankruptcy Reform Bill.....	133, 183
Cafeteria Benefits.....	133
Cameras in Courtrooms.....	122
Capital Representations.....	139
Congressman Serrano's Opening Statement.....	118
Context of Request.....	4
Court Security.....	111
Department of Justice Supplemental Request.....	141
Director Mecham's Opening Statement.....	81
Extending Marshals Service Arrest Powers To Immigrant Violations.	119
Federal Judicial Center.....	81
Growing Prisoner Population.....	172
Growth in Judiciary Workload.....	2
Impact of High Profile Trials on Local Communities.....	116
Increasing Staff Requirements for Probation and Pretrial Services	135
Independent Review of the Judiciary.....	126
Inspector General Position in the Judiciary.....	185
Joint Terrorism Task Force.....	113, 114, 172
Judge heyburn's Opening Statement.....	1
Judicial Security Program.....	112
Marshals Service Workload.....	129
Oxycontin Cases.....	139, 184
Panel Attorney Rate Increase.....	3
Recruitment of Minorities.....	124
Reports of Decline in Criminal Filings.....	128
Telecommuting.....	172
Telework.....	183
Terrorist Trials on Military Bases.....	115
Threat Level Response.....	113
U.S. Marshals Service.....	82
United State Marshals Service Director Benigno Reyna.....	176

The Supreme Court of the United States

	Page
Opening Statement.....	187
Supreme Court Salaries and Expenses.....	189
Written Statement.....	191
Court Automation.....	193
Security.....	196
Perimeter Security.....	196
Supreme Court Workload.....	220
Caseload.....	243
Civil Cases.....	244
Judicial Vacancies.....	245
Court Automation.....	246
Judicial Vacancies.....	248
Dialogue On Freedom.....	248
Electronic Filing.....	249
Audio Tapes of Oral Arguments.....	251
Outside Technology Expert.....	252
Cases Granted Review.....	253
Workplace Programs.....	253
Modernization Project.....	254

Mandatory Minimum Sentences.....	255
Federal Trade Commission.....	
Do Not Call Database.....	333
FTC Budget Request.....	325
Gasoline Prices.....	345
Hispanic Outreach.....	331
Management.....	347
Media Violence.....	326, 337
Spam Enforcement.....	342, 347
Securities and Exchange Commission.....	
Accounting for Stock Options.....	405
Agency's Attrition Rate.....	411
Anticipating Problems in the Financial Community.....	403
Assistance to Developing Countries.....	414
Auditing Standards and Inspections.....	430
Chairman Wolf's Opening Remarks.....	353
Code of Ethics for Venture Capital.....	405
Conclusion.....	421
Definition of Materiality.....	419
Developing Foreign Securities Markets.....	416
Disclosing Business Links to Repressive Regimes.....	417
Effective Utilization of Resources.....	396
Ethics in Business Culture.....	396
FASB Independence.....	431
Fiscal Responsibilities.....	399
Foreign Corporation Disclosure.....	398
GAO's Recommendation on Automation Review Policy.....	401
Globalization of Securities Markets.....	411
Independent Analysis of IT Systems.....	406
Insider Loans.....	428
Listing of Foreign Companies.....	413
Oversight of PCAOB Spending.....	409
PCAOB Board Members' Salaries.....	409
Percentage of SEC Telecommuters.....	421
Restoration of the Financial Community.....	402
SEC Opening Statement.....	355
SEC Staff Diversity.....	400
SEC's Information Technology Program.....	406
Selecting a PCAOB Chairman.....	408
Spending Needs and Staffing Levels.....	397
Tax Treatment of Wall Street Settlement.....	432
Telecommuting.....	420
Welcome.....	354
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